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ACTUALITÉS REPORT

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CANADIAN CRIMINAL JUSTICE ASSOCIATION •• ASSOCIATION CANADIENNE DE JUSTICE PÉNALE

JUSTICE ACTUALITÉS REPORT

Volume 31 No. / N° 2

The **JUSTICE REPORT** contains information of value to Association readers and the public interested in matters related to the administration of justice in Canada. Opinions expressed in this publication do not necessarily reflect the Association's views, but are included to encourage reflection and action on the criminal justice system throughout Canada. For more information on the activities of the CCJA, please contact: •• L'**ACTUALITÉS-JUSTICE** renferme des renseignements utiles aux lecteurs de l'Association et au public qui s'intéressent aux questions relatives à l'administration de la justice au Canada. Les opinions qui sont exprimées ne reflètent pas nécessairement les vues de l'Association, mais y figurent afin d'encourager à réfléchir et à agir sur la justice pénale dans tout le Canada. Pour obtenir de plus amples renseignements sur les activités de l'Association, veuillez communiquer avec :

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EDITORIAL

BY Irving Kulik, Executive Director of the CCJA

As we begin a new fiscal year at CCJA there are a number of interesting developments I would like to share with the membership. Firstly, as the affiliate presidents know, our Board commenced a strategic planning exercise last summer and this will probably continue until the coming fall. Essentially we are examining the changing nature and demographics of our membership and seeking the approaches that best serve our members and the long term goals of CCJA. In the meantime I have undertaken discussions with affiliate presidents and intend on participating in more regional events in order to strengthen our bonds. The work of the Policy Review Committee gives us a great deal of credibility in the area of public policy development and our biennial congress is a rich source of professional education and networking. More however can be done in the intervening year as well as in connecting with the public at large on an on-going basis. How we accomplish these objectives and others will be the topics of our review and we welcome the input of all our affiliates and members.

We have begun serious planning for our next congress to take place in Toronto at the Sheraton Centre Hotel October 25-27, 2017. This event is unique in our history in that we will be partnering with the Ontario Ministry of Children and Youth, as well as our affiliate, the Criminal Justice Association of Ontario. The congress is entitled **Canadian Youth and Justice: Advancing Ideas, Evidence and Innovation**. We will have issued a Call for Abstracts by the time you read this editorial. We will entertain presentations in research and innovation within the areas of youth special needs such as mental health, substance abuse and others, Aboriginal youth, community resiliency, police and community initiatives and other related issues. The subject areas are broad enough to attract presenters from academia, governments as well as eager practitioners who will enlighten the delegates and share their successes and best practices. The involvement and assistance of management and key staff at Children and Youth has been tremendous and we are expecting a most impressive turnout. On a daily basis we hear and read about the current challenges and problems faced by our youth. Hopefully we will learn about some breakthroughs and good news stories at Congress 2017.

While we are still more than a year away from Congress 2017, in 2019 CCJA will be celebrating its first centenary, marking the events that have taken place since 1919 and the role that CCJA has played. For this reason we have also begun talking about the 2019 congress and we have issued some guidelines for affiliates who may be interested in hosting the 2019 conference. More to come!

Finally, it is time to kick off our board election process. We will be issuing a call for nominations from all members of the Association and even if you have never been on this board I would urge you to consider putting your name forth as a candidate. We can always benefit from new ideas. The board is composed of one director from each province, one for the Territories and four positions at-large. Each CCJA member can vote for any and all positions but, you must reside in the province that you aim to represent, unless you are vying for the at-large positions. Four year terms commencing September 1, 2016, are available in British Columbia, Alberta, Saskatchewan, Manitoba, PEI, Newfoundland-Labrador and the Territories. In addition the four at-large director positions need to be filled. Give it some thought and get involved. It can be a great experience and learning opportunity.

Have a great and warm spring!

ÉDITORIAL

PAR Irving Kulik, directeur général de l'ACJP

Au moment où l'ACJP entame un nouvel exercice financier, j'aimerais faire part à nos membres de plusieurs développements intéressants. D'abord, comme les présidents de nos affiliées le savent, notre Conseil a entrepris un exercice de planification stratégique l'été dernier; celui-ci se poursuivra probablement jusqu'à l'automne prochain. En gros, nous sommes à examiner la nature changeante et les données démographiques afférentes à nos adhérents et nous tentons de trouver les approches qui serviront le mieux nos membres et les buts à long terme de l'ACJP. Entre temps, j'ai amorcé des discussions avec les présidents de nos affiliées et j'ai l'intention de participer à un plus grand nombre d'événements régionaux dans le but de resserrer nos liens. Le travail du Comité d'examen des politiques nous confère beaucoup de crédibilité au chapitre du développement des politiques publiques et notre congrès biennal constitue une source riche de développement professionnel et de réseautage. Il nous faudrait toutefois être plus actifs au cours de l'année intermédiaire et tenter de rejoindre le grand public sur une base continue. La façon de réaliser ces objectifs et d'autres fera l'objet de notre examen et nous accueillerons avec plaisir les commentaires de nos affiliées et de nos membres.

Nous avons entrepris de planifier notre prochain congrès qui se tiendra à l'hôtel Sheraton Centre de Toronto du 25 au 27 octobre 2017. Il s'agira d'un événement unique dans notre histoire puisqu'il sera réalisé en partenariat avec le ministère des Services à l'enfance et à la jeunesse de l'Ontario, de même qu'avec notre affiliée, l'Association de justice pénale de l'Ontario. Le thème retenu sera ***Les jeunes et la justice au Canada : contribuer à la promotion d'idées, de données disponibles et de l'innovation.*** Au moment où vous lirez cet éditorial, nous aurons déjà lancé une invitation à présenter des communications. Nous accueillerons des communications en matière de recherche et d'innovation dans les secteurs des besoins spéciaux des jeunes (tels les problèmes de santé mentale, l'abus d'alcool et d'autres substances), les jeunes autochtones, la résilience communautaire, les initiatives policières et communautaires et autres sujets connexes. Les champs couverts sont suffisamment larges pour attirer des conférenciers des milieux universitaire et gouvernemental ainsi que des praticiens enthousiastes, qui inspireront les congressistes et mettront en commun leurs réussites et leurs pratiques exemplaires. Les cadres et certains membres clés du personnel des Services à l'enfance et à la jeunesse se sont investis de manière remarquable et cela nous permet d'espérer un nombre impressionnant d'inscriptions au congrès. Nous entendons parler chaque jour des défis et des difficultés que doivent affronter nos jeunes et nous prenons connaissance d'articles sur ces sujets. Nous espérons entendre parler de certaines percées et de bonnes nouvelles lors du Congrès 2017.

Bien qu'il reste encore plus d'un an avant à tenue du Congrès 2017, l'ACJP célébrera en 2019 son premier centenaire et les événements marquants qui se sont produits depuis 1919 ainsi que le rôle joué par l'ACJP. C'est pourquoi nous avons déjà amorcé les discussions relatives au Congrès 2019 et avons produit certaines lignes directrices à l'intention des affiliées qui pourraient souhaiter présenter ce congrès. D'autres détails suivront!

Finalement, le moment est venu d'amorcer le processus d'élection à notre conseil d'administration. Nous allons publier un appel de candidatures à l'intention de tous les membres de l'Association et, même si vous n'avez jamais siégé au Conseil, nous vous incitons à soumettre votre candidature. Nous pouvons toujours profiter de nouvelles idées. Le Conseil est constitué d'un membre provenant de chaque province, d'un membre représentant les territoires et de quatre membres représentant l'ensemble du pays. Chaque membre de l'ACJP peut voter pour l'un ou l'autre ou tous les candidats, mais pour être candidat, on doit résider dans la province qu'on souhaite représenter, à moins qu'on ne postule pour l'un des quatre postes de représentants de l'ensemble du Canada. Les mandats sont de quatre ans à compter du 1er septembre 2016. Il y a des postes à pourvoir pour la Colombie-Britannique, l'Alberta, la Saskatchewan, le Manitoba, l'Île-du-Prince-Édouard, Terre-Neuve-et-Labrador et les Territoires. Il faut en outre pourvoir quatre postes d'administrateurs pour l'ensemble du Canada. Pensez-y et investissez-vous. Il pourrait s'agir d'une très belle expérience et d'une occasion d'apprentissage.

Je vous souhaite un merveilleux printemps et beaucoup de chaleur.

CCJA BOARD OF DIRECTORS 2016-2020

CALL FOR ELECTION CANDIDATES

IT IS TIME FOR THE 2016 ELECTION PROCESS TO COMMENCE!

All members in good standing may present themselves as candidates for the Board or nominate a member colleague.

ELECTIONS ARE OPEN FOR THESE POSITIONS →

Candidates must reside in the province for which they are nominated and the territorial representative may reside in any of the three territories.

In addition, a total of **4 At-Large positions** are available to any member in good standing, regardless of residency.

All positions will have a four year term commencing September 1, 2016.

Members wishing to be a candidate must complete the candidacy form and return it to CCJA BEFORE JUNE 17.

Talk to your colleagues, consult your local affiliate and get involved. We are always seeking motivated individuals to ensure the Association remains dynamic and forward looking.

1 vacancy in BRITISH COLUMBIA
1 vacancy in ALBERTA
1 vacancy in SASKATCHEWAN
1 vacancy in MANITOBA
1 vacancy in PRINCE EDWARD ISLAND
1 vacancy in NEWFOUNDLAND -LABRADOR
1 vacancy for the TERRITORIES

CCJA BOARD OF DIRECTORS 2016-2020 CANDIDACY FORM

CANADIAN CRIMINAL JUSTICE ASSOCIATION
101 - 320 Parkdale Avenue, Ottawa, ON K1Y 4X9 | EMAIL: ccja-acjp@rogers.com | FAX: 613.725.3720

I, (please print) _____, am a **MEMBER IN GOOD STANDING** of the Canadian Criminal Justice Association. I wish to stand for election or nominate the following person-member in the following jurisdiction:

_____
Province/Territory

_____
Name of the candidate if you are nominating someone else

_____
Signature

_____
Date

PERSONAL AND PROFESSIONAL BACKGROUND
In the box below, please provide an outline of your background (or that of the person you are nominating) to assist our voting members in their decision. Please do not send a curriculum vitae.

Please fill out this form and return it to the above address, email or fax.

Remembering Senator Earl Adams Hastings

BY MARY E. CAMPBELL

MAY MARKS THE 20th ANNIVERSARY OF THE PASSING OF ONE OF THE GREATEST MEMBERS OF THE SENATE IN HISTORY. EARL ADAMS HASTINGS WAS PERHAPS AN UNLIKELY CANDIDATE FOR THAT RECOGNITION – A "PRAIRIE BOY" WHO WENT STRAIGHT INTO THE MILITARY AFTER HIGH SCHOOL, THEN WORKED IN AGRICULTURE AND OIL. THERE WAS NOTHING IN HIS EARLY LIFE THAT SUGGESTED HE WOULD BECOME NOT ONLY AN OUTSTANDING PARLIAMENTARIAN BUT ALSO ONE OF THE MOST COMMITTED PRISON JUSTICE ADVOCATES OF THE LAST CENTURY.

The beginning

Earl Hastings was that 'rarest' of modern Canadians: a Liberal from Saskatchewan and Alberta. Born in Regina in 1924, he first served his country by entering pilot training in the RCAF at the young age of 18. It was not long after the end of World War II that he became the Leader of the Saskatchewan Liberal Party in 1948, where he served for four years. A Liberal from the day he was born, Hastings was swimming against the tide even then. From its inception as a province in 1905 until 1929, Saskatchewan voters elected a Liberal government in every one of six provincial elections, and returned them to power in 1934 and 1938. But a decade later, to be Liberal was distinctly out of vogue.

Moving to Calgary in 1957 to pursue an oil career, Hastings became President of the Alberta Liberal Association. The Alberta Liberals were also well into their twilight years then, after having been the majority government for the first 16 years of the province's existence. Twice an unsuccessful candidate for Parliament, the loyal Hastings was appointed to the Senate by Prime Minister Pearson in 1966 at the relatively young age of 42. His best days lay ahead of him.

Eleven thousand twenty-nine days, to be precise–for a total of 30 years and two and a half months as a Senator. And Hastings made every one of those days count. His first interest was in joining the 1968 Special Senate Committee on Poverty under the chair of Ontario Senator David Croll. For three years, "the Committee travelled the length and breadth of Canada on a fact-finding assignment without parallel in our history. Its members saw the tragedy of poverty at first hand; not in abstract terms but in the crucible of human experience." In a 1991 interview, Hastings said that he "enjoyed that work immensely". And one can guess that the Committee's emphasis on treating the root causes of poverty rather than its symptoms came to influence his approach to other issues.

In all, he served on a total of 21 different Standing and Special Senate Committees and four Joint Committees of the Senate and House, and was Chair of three. And a wide range of Committees they were: National Defence, Poverty, Northern Pipeline, Aboriginal Peoples, Banking, Immigration, on and on. All of this work was in addition to his oratory and legislative maneuvering on the Senate floor.

And maneuvering it was – he took his legislative role deeply seriously and was not afraid to fully exercise what he saw as his bounden duty. "Why the hell are we here," he thundered on one bill, "if it is the will and the wish of the public of Canada that, when the House of Commons passes a bill, we rubber stamp it? I believe that my responsibility is to do the best I can to make my best effort to examine legislation and, if possible, to improve upon it. I believe, with respect to any issue, that I have a responsibility to bring that issue up for public discussion." Discuss it, amend it, and send it back to the House of Commons as he did on that occasion. Detailing his "contempt and disgust" for another bill he described as "claptrap" and "an exercise in delusion", he asked Senators to "join me in sending this thing which purports to be a bill back to the place it came from."

The prison justice advocate

Not surprisingly, these were bills about prisons, because Hastings' passion had become prison justice. It was his heart and soul. In 1967 or 1968, he has recounted, a man came to see him in his Calgary

Hastings said there was nothing he could do about the law, but agreed to meet with the brother. The man came out on a pass from Drumheller Penitentiary and, as Hastings put it, "something triggered my interest". Hastings went out to Drumheller and met with the lifers group, as well as with the Warden, Pierre Jutras. Warden Jutras was a reformer who wanted to try out new ideas, and he and the Senator rapidly became good friends.

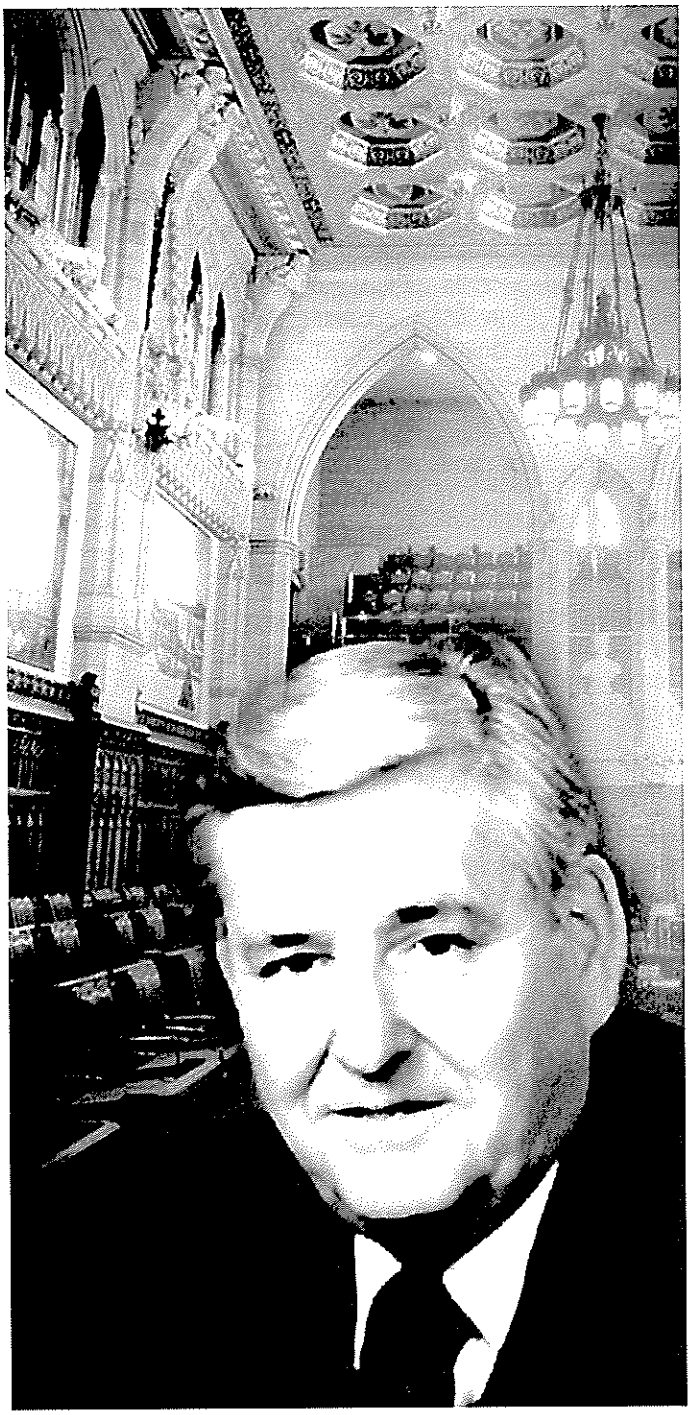
By the time Hastings became the Honourary President of the Drumheller Lifers Group as well as Honourary Inmate #11 at Saskatchewan Penitentiary, he was a relentless advocate for prison justice. Whether it was legislation affecting thousands of prisoners or a solitary issue affecting one inmate, Hastings pursued fairness, decency, humanity – these were his values, and not in the abstract. He fought for the preservation of the legislated right of Parliamentarians to visit any penitentiary, anywhere, anytime – as he did, not just in the sanitized offices of management, but on the ranges. As one former resident remembers, "Senator Hastings sat in my cell with me so he could get a perspective of what it might be like."

Some particular issues: the death penalty, segregation, victims

Hastings was a strong advocate for repeal of the death penalty in the 1973 capital punishment debate. In later years, he called its defeat his greatest accomplishment.

In 1975, Hastings called on CSC to end solitary confinement in maximum security penitentiaries, on the heels of the *McCann* ruling on segregation conditions at B.C. Penitentiary. Hastings acknowledged that there would always be some need for solitary, but that the person should be in and out as soon as possible, and that the regime should be administered in a "logical, sensible manner and with a bit of respect for the human being".

Hasting's vision of social justice was not just about prisoners. Victims, he felt, are entitled to consideration, compassion and concern. But equally strongly he felt they are not entitled to "harass" the offender until release. *How does harassing the offender help the victim?*, he asked. He argued strongly that there was no place for vengeance in the criminal justice system, and he was particularly angered when he saw some organizations thwarting prisoners' positive efforts at reform, such as opposing the 1991 lifers conference in Ontario.



Hasting's overall goals

Hastings saw the issues of poverty, mental health, education, and marginalization behind crime. He saw the madness of prison: "Surely we understand that jails never accomplished anything. But we still throw them in there and hope that something will happen." He was as capable of partisanship as anyone, but he never wavered in what he saw as his most principled task. "As an appointed official," he acknowledged in the Senate, "I cannot block the will of an elected government." At the same time, he averred on one particular bill, "I intend to continue with all my capability to enlighten the government... on the need to amend this legislation, to make it a better bill, to appeal for understanding, logic and reason. I have done all I can in loyalty to my conscience to convince honourable senators and to convince the government of my conviction that this legislation is inadequate."

He was very critical of legislation that he saw as band-aid solutions, or posturing in the name of public safety. Speaking in 1991 (when the new *Corrections and Conditional Release Act* was before Parliament), he thundered "these law and order bills are a sham on the public." He went on, "Every two years we are going to protect the public. We take a whack at the inmates and a whack at the correctional system and protect nothing, instead of going to the root cause of our evil in society, which is a social problem". Taking direct aim at the CCRA, he pulled

no punches: "I want to make a real contribution on this bill, to try to educate the public as to what happens with these damnable bills that solicitors general bring forward."

While his causes were not popular ones, Hastings' tireless work was recognized. In 1986 he was awarded the John Howard Society Distinguished Canadian Humanitarian Award. In 1992 he received the St. Leonard Society of Canada Humanitarian Advancement Award. And the Canadian Criminal Justice Association created an award in his name to commemorate him and to acknowledge others outside the system who today make a significant contribution and demonstrate a continuing commitment to more humane and effective criminal justice in Canada.

The Senate, old and new

Earl Hastings was a giant in the Senate, but he was not alone. Ask any public servant who worked in criminal justice and appeared before the Senate Standing Committee on Legal and Constitutional Affairs in the 1980s or 1990s. It was simply a pleasure to answer questions from and discuss issues with people of the likes of Gerald Beaudoin, Serge Loyal, Pierre-Claude Nolin, Joan Fraser, and others. They were smart, well-informed, and passionate about the issues and doing the right thing. Party affiliation was irrelevant to the debate. And public servants' motives, expertise, and loyalties were never questioned.

Following a very difficult decade, Prime Minister Trudeau recently appointed seven outstanding people to the Senate. May they be inspired by Senator Hastings' legacy to "make a real contribution", and rise above the pettiness and cheap politics of recent years. Earl Hastings lived his convictions to the fullest, and never saw the Senate as anything less than a wonderful opportunity to serve Canada and every citizen. It was a glorious institution not so long ago, and Earl Hastings stood tall in its midst. May the seven new appointees and those to follow rise to his heights.••

RÉSUMÉ

REMEMBERING SENATOR EARL ADAMS HASTINGS
Par Mary E. Campbell

Mai marque le 20e anniversaire du décès de l'un des plus illustres sénateurs de l'histoire. Earl Adams Hastings – un « petit gars des Prairies » était peut-être la personne la moins susceptible de mériter cette distinction – il s'est enrôlé dans les forces armées immédiatement après ses études secondaires, puis il a œuvré dans les secteurs de l'agriculture et du pétrole. Rien de sa jeunesse ne laissait entrevoir qu'il allait devenir un parlementaire exceptionnel et l'un des défenseurs les plus engagés de la justice pour les prisonniers au cours du siècle dernier.

CONGRESS//CONGRÈS 2017

CANADIAN YOUTH & JUSTICE

Canadian Youth and Justice: Advancing Ideas, Evidence and Innovation

Les jeunes et la justice au Canada : contribuer à la promotion d'idées, de données disponibles et de l'innovation.

CALL FOR ABSTRACTS

SEE THE BACK COVER OF THIS MAGAZINE FOR MORE INFORMATION.

INVITATION À PRÉSENTER DES COMMUNICATIONS

VOIR L'ENDOS DU MAGAZINE POUR DE PLUS AMPLES RENSEIGNEMENTS.

Youth at Risk Community Safety Program – Changing Direction and Changing Lives

BY KAREN REID SIDHU

Executive Director Surrey Crime Prevention Society

Submitted by Colleen Kerr City of Surrey- Crime Reduction Strategy Manager

VULNERABLE OR PROBLEMATIC ADULTS USUALLY START OFF AS VULNERABLE OR PROBLEMATIC CHILDREN, AND IT IS MORE OFTEN THAN NOT THAT THEY ALSO LIVED IN VULNERABLE HOUSEHOLDS. THE HIGHEST PROPORTION OF THEM ALSO COME FROM LONE PARENT HOUSEHOLDS (MOST OFTEN LED BY SINGLE MOMS). BUT, THE GOOD NEWS IS THAT SUPPORTS ALONG THE WAY INCLUDING THE INFLUENCE OF A STRONG AND POSITIVE MENTOR OR BEING PROVIDED POSITIVE OPPORTUNITIES WILL VERY OFTEN TURN LIVES AROUND. THIS IS THE STORY OF ONE WAY WE ARE DOING THIS IN THE CITY OF SURREY.

Many of us, at one point in our lives, had someone who influenced us leaving a life changing lasting impression, whether it was a coach, a teacher, a colleague, a friend or a parent. That person may not have realized the role they played and the impact they had on your life. Unfortunately, not every young person has the opportunity to experience this type of positive influence, whether it is because of cultural or socio-economic circumstances. We all know that a young person can change for the better with the support and guidance of a mature and wiser adult. These types of relationships can also heavily influence and change the attitudes and behaviours of youth at risk.

Surrey BC's Community Safety Volunteer Youth Leadership and Mentorship Program

In 2013, Surrey Crime Prevention Society introduced a pilot program "Community Safety Volunteer Youth Leadership and Mentorship Program" to address the needs of youth who may not otherwise have a positive influence in their lives. As youth at risk are vulnerable and at a higher risk of being recruited to groups exposing them to significant danger, this program offers an opportunity to develop important life skills and provide these youth with a way to experience new opportunities. Youth who may be considered at risk of falling into dangerous criminal behaviour or who have a history of such activity will be considered candidates for the program and be invited to participate.

Working with community agencies, mentees between the ages of 12 and 18 are selected and paired up with mentors based on similar interests. This program introduces a number of key activities important to these groups:

- peer support
- guidance
- mentorship

Finding the right mentor for each mentee

Mentors are selected through an application process and are evaluated based on their experience with the Society and willingness to participate in additional training. In order to ensure the program's success and to set a standard for involvement, all mentors who support this program are qualified through a four step process. These steps include:

1. Application from mentors outlining their experience working with youth
2. Selection and interview process describing their personal experience through behavioural questioning
3. Background checks and a Vulnerable Sector Check to confirm eligibility to work with youth
4. Ability to make a **minimum** three-month commitment to the program with a possible extension on a case-by-case basis

University post-secondary student volunteer involvement in the mentor program

The mentor volunteers are primarily students attending post-secondary institutions in a variety of different programs including Criminology and Political Science. It is the intent of the Society to utilize student volunteer involvement for this program, as they will provide a peer perspective to the program and will be better able to engage with those students who have been selected as participants. Many of these volunteers are interested in pursuing careers in law enforcement and other similar career paths involving community service.

Sufficient administrative support is key to ensuring success for program volunteers

As volunteers are a critical resource for SCPS, it is important that volunteers with SCPS have sufficient administrative support for their activities. Volunteers work with the support of staff to ensure they are successful in the program.

New relationships for the mentee include the mentor, other volunteers involved in programs, community partners such as police officers, fire department personnel, business stakeholders, community groups and residents

Once a partnership is established and agreed to, both the mentor and the mentee participate in training. This training provides the mentee with an overview of the programs offered by the Society and they then set goals with their mentor. Youth experience the value of giving back to their community while learning new skills and developing new relationships. These new relationships with the mentee include the mentor, other volunteers who are involved in programs, community partners such as police officers, fire department personnel, individuals from the business community, and community groups and residents. A minimum of a three-month commitment is a requirement from the mentee in order to participate in this program. At no time are mentees identified to anyone as youth at risk other than to the mentor, program safety specialist and management within the Society.

These participants find the experience so rewarding, some continue on with their mentor and, when they turn 18, they join the team of volunteers and participate in one of the programs offered by the Society. This mentorship program has seen the successful completion of 28 partnerships over the past two years. These experiences resulted in a positive experience for both, the mentor and the mentee. Mentors have been able to influence mentees to look at their lives and make positive changes. For example, a youth who is surrounded by peers who engage in violent activities is at risk of engaging in similar behaviour. However, that youth may be better able to resist this kind of peer pressure, with the presence of positive influences such as an encouraging mentor. Studies have shown that the association between having violent friends and violent adolescent male behaviour is lower among youth who had a strong bond with and support from their immediate families or a positive role model.

The changes in behaviour of the mentees are profound and include the mentees evaluating the choices they are currently making in their lives that have a negative impact and identifying ways to change the choices they make, including identifying ways to keep busy through new activities, e.g., going to the gym, focusing on school, playing team sports, etc. Many of the mentees participating in this program are male and are referred based on past behaviour that was questionable or of a criminal nature.

One significant positive outcome of this program is that mentees are included in the community based programs and interact in a positive environment with female volunteers, providing mentees with a different outlook on the role of young women within the community.

TESTIMONIALS

In order to really understand the benefits of this program, the Society has compiled a number of testimonials from the mentee, mentor and community partners. Beside are a sample of these testimonials:

**Initials are used to protect the identity of the mentees under our confidentiality agreement with the community partners.*

SURREY CRIME PREVENTION SOCIETY

ENHANCING COMMUNITY SAFETY TOGETHER

Bindy M

Probation Officer with the Ministry of Children and Family Development

I just wanted to thank you and your staff with providing my youth with great mentorship. They enjoyed the experience and some have continued with this organization. It certainly gave them an opportunity to look at where they can improve. Also the mentorship was useful for these young ones that are from the same community. Furthermore, there were youth that had help with their resumes, working out conflicts, getting back into the community and working out their Court matters. The assistance was greatly appreciated and I find this to be a successful program that could merit our youth in the future as well.

Channi Toor

Mentor and Volunteer with Surrey Crime Prevention Society

The youth-at-risk mentorship program was an amazing experience for me. It was truly an honour to be apart of such a meaningful program that aims at positively impacting youth in our community. My mentee and I were able to bond and build mutual trust very easily. We explored a number of different topics through our time together- from high school struggles to future career aspirations and everything in between. My mentee told me countless times about how he really enjoys coming to his shift every week, because he looked up to me as a big brother he never had. I saw positive growth in my youth throughout our shifts, but also saw me grow as a person. This program amazed me and was a huge eye opener in general. I would recommend this program to anyone–Surrey Crime Prevention Society.

H.

Mentee (youth at risk)

First participant referred by Ministry of Children and Family Development worked with Sunny.

First off I would like to begin by saying that after working with the individuals at Surrey Crime Prevention Society and experiencing what the volunteers go through day to day to keep our community a safer place, I have a much greater respect for them. From the first day to the last, every person at the program, including the volunteers, have been extremely polite and helpful. Working with Sunny was easy and fun at the same time. He was very cooperative and I always looked forward to working with him on our patrols. To sum up my experience and time working with the Surrey Crime Prevention Society, I would say that it was a great opportunity and I hope I get the chance to work with them again, but under different circumstances.

Jerry Gunadasa

Mentor

I am in my 2nd year of the Law Enforcement Studies Diploma Program at The Justice Institute of British Columbia. I have been a volunteer with the Surrey Crime Prevention Society since November, 2014. Recently, I have had the pleasure of participating in the Community Safety Youth & Mentorship Program. For several weeks now I have continued to work one on one with a mentee on a weekly basis in the Fleetwood Community Safety Tours program. By following routine procedures, doing check-ups, interacting with the public, and observing and reporting suspicious activities, we ensure the safety of the community. Already, the mentee has gained invaluable personal skills and has shown a great interest in pursuing a career in law enforcement. With my own knowledge of the steps to take to in order to pursue this career, I have been able to guide the mentee and provide them with useful resources to develop a concrete plan for their future. I have highly benefited from this program also, as I have continued to learn and grow as a mentor each week. I really look forward to my time in this program and I strongly recommend the continuation of it.

M. M.

Mentee (youth at risk)

Working with Jerry, I have only had positive experiences for the past 9 months. I have had the chance to gain experience in patrolling, observing, reporting, and communicating with emergency services. I enjoy working with my mentor because we have a lot in common and we think alike. He has also helped me to get into other programs like the RCMP Youth Academy, which I will be starting this year. We are also working on my application to the Law Enforcement Studies Program at The Justice Institute of British Columbia. What motivates me to come in to volunteer is being able to work with my mentor and have the opportunity to patrol on foot, bike and vehicle to observe and report suspicious activities. Overall, I truly enjoy helping to ensure the safety of the community. My perspective has changed a lot after being in this program from the way I view and handle situations, conduct myself, and has encouraged me to apply these principles to my daily life. Thank you for your support.

In addition to the testimonials, our mentors provided us with a debrief of the experience with their mentee. Below is an example of the information shared by the mentor on the mentees overall experience with the program:

Sunny Gill, Mentor, debrief of

- H's goal was to meet new people and he had the opportunity to do so by interacting with other volunteers and community partners- Sunny had the opportunity to introduce H to volunteers, team leaders and coordinators in the Newton and Guildford area.
- Sunny felt the greatest achievement was the communication level between himself and H. They both regularly communicated with each other regarding to both SCPS volunteering and as well with regards to decisions H made in his day to day life.
- Sunny felt that they would talk throughout most of tours so that was the best way to communicate with H who was shy. Therefore, Sunny chose to participate in tours with H and maintain a strong line of communication with him. This was proven to be effective, as H was able to discuss challenges that he faced with friends and discussions made in the past.
- The matching worksheet was beneficial, as Sunny and H found many commonalities- they grew up in the same neighborhood and knew similar individuals, which allowed Sunny to guide H in terms of the peer group who may not make the best decisions.
- H did not claim to have any overbearing challenges in his day to day life. His parents would drop him off at the office to meet Sunny. In addition, H let Sunny know that he works with his cousin and is planning on attending university (possibly Kwantlen) in the near future.

- Sunny encouraged H to participate in extracurricular activities or hobbies and suggested that a good way to deal with stressful situations or heightened emotions is to work out. As per Sunny's advice, H has started going to the gym.
- Due to the fact that H was an older youth participating in our program, Sunny had no contact with H's parents. This did not prove an impediment, however, as it required H to be accountable for his own actions and ensure that he came to his meeting with Sunny on time and was personally responsible for his communication and punctuality.
- Experiences that H had with Surrey Crime Prevention Society included learning the appropriate protocol in picking up needles. He experienced the effects of drug use by touring in the Downtown Surrey area and witnessing first-hand the individuals who were experiencing drug addiction. H also learned how to make calls to police non-emergency and when to call non-emergency and when to call 911. Sunny showed H how he uses his notebook and he benefits from having a notebook as a Community Safety Volunteer. He also had regular positive interactions with law enforcement and this gave him a different perspective of their positive role in the community.
- H expressed to Sunny that he enjoyed his experience with Surrey Crime Prevention Society, as well was working in the Downtown Surrey area and although will not volunteer right away is going to consider it in the future.

This programs success is a direct result of the commitment from the youth involved, the willingness of volunteers to support this program, the eagerness of community partners to support this unique program by referring their clients and the collaboration between all parties understanding the goals of the program. Many youth at risk have expressed concern that traditional support measures are ineffective and it is the focus of this program to provide these youth with the skills necessary to build a strong working relationship with their mentor, leading to positive community involvement and significant change in behaviour and improved self-esteem.••

Surrey Crime Prevention Society is a volunteer based organization and its programs support community safety initiatives throughout the City of Surrey. There are over 300 volunteers who represent the diverse cultural community in Surrey. These volunteers support the enhancement of community safety in the City and in 2015 volunteers contributed an amazing 29,268 hours. Their commitment towards the enhancement of community safety has benefited the City significantly through the various activities by these volunteers including observing and reporting on suspicious activity, supporting public awareness campaigns, supporting special projects and events and participating in the mentorship program for youth at risk.

RÉSUMÉ

YOUTH AT RISK COMMUNITY SAFETY PROGRAM – CHANGING DIRECTION AND CHANGING LIVES

Par Karen Reid Sidhu, directrice générale, Surrey Crime Prevention Society

Soumis par Colleen Kerr – gestionnaire, Crime Reduction Strategy, Ville de Surrey

Les adultes vulnérables ou à problèmes ont habituellement été des enfants vulnérables ou à problèmes et, la plupart du temps, ils ont également vécu dans des ménages vulnérables. La plus forte proportion de ceux-ci provient de foyers unifamiliaux (le plus souvent ayant une mère monoparentale à leur tête). Mais il y a une bonne nouvelle: s'ils jouissent de certains soutiens dans leurs parcours, incluant l'influence d'un mentor solide et positif, ou s'ils se voient offrir des possibilités positives, leur vie sera souvent transformée. Nous vous présentons ici l'une des façons par lesquelles nous parvenons à cette fin à Surrey.

PLEASE SEND ANY REMARKS, OR A COMMENTARY, REGARDING THIS ARTICLE

to *Justice Report* Editor, Nancy Wright:

ccjapubsacjp@gmail.com

and keep your eye out for the Notices/Feedback section in future issues!

VEUILLEZ ADRESSER TOUT COMMENTAIRE RELATIF À CET ARTICLE

à l'éditrice de l'*Actualité-Justice*, Nancy Wright :

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Demeurez à l'affût de la section Avis/commentaires dans les numéros à venir.

THE CASE FOR LESS IMPRISONMENT /PUNISHMENT AND FOR MORE REHABILITATION/TREATMENT OF SEXUAL OFFENDERS in the Canadian Criminal Justice System

BY STEFAN HORODECKYJ
B.A., B.Ed., J.D.

THIS ARTICLE DISCUSSES THE FACT THAT SENTENCING IN CANADIAN COURTS REFLECTS A BELIEF IN IMPRISONING/PUNISHING THE SEXUAL OFFENDER OVER REHABILITATING/TREATING, YET SCIENTIFIC RESEARCH DOES NOT SUPPORT THE TENET THAT SUBSTANTIAL IMPRISONMENT/PUNISHMENT OF SEXUAL OFFENDERS REDUCES SEXUAL OFFENCES. NOTING THE DIFFERENT SEX TREATMENT PROGRAMS AVAILABLE FOR MALE AND FEMALE OFFENDERS WITHIN THE CRIMINAL JUSTICE SYSTEM, HORODECKYJ NOTES THAT THESE ARE NOT ALWAYS AVAILABLE AND ARE NOT MANDATORY. REPORTING THAT A PLETHORA OF RESEARCH STUDIES SHOW THAT SUBSTANTIAL PRISON TERMS, AS OPPOSED TO MODERATE OR SHORT, DO LESS TO REDUCE CRIME, INCLUDING SEX OFFENCES, AND LITTLE IN TERMS OF REHABILITATION. THE AUTHOR PROPOSES A NUMBER OF LEGISLATIVE CHANGES BASED ON BEST PRACTICES DERIVED FROM SUCH STUDIES.

In Canadian Courts there is more emphasis at the sentencing stage on imprisoning /punishing the sexual offender, than on rehabilitating/treating

The Courts focus on denouncing sexual offences and deterring the sexual offender and other persons from committing sexual offences, by meting out substantial prison sentences.

For example, the *Criminal Code of Canada*, prescribes the following substantial prison terms: Section 271- sexual assault (maximum 14 years); Sec. 272- sexual assault with a weapon (maximum life, and mandatory minimum 4 years); Sec. 273- aggravated sexual assault (maximum life, and mandatory minimum 4 years); Sec. 155 - incest (maximum 14 years and mandatory minimum 5 years); Sec. 159- anal intercourse (maximum 10 years); Sec.151 - sexual interference (maximum 14 years and mandatory minimum 90 days); Sec. 152- invitation to sexual touching (maximum 14 years and mandatory minimum 90 days); Sec. 153 - sexual exploitation (maximum 14 years and mandatory minimum 90 days); Sec. 163.1 (3)- distribution of child pornography (maximum 14 years and mandatory minimum 1 year). It is noteworthy that the sentences for sex offences on children and for repeat offenders are more severe.

A plethora of research studies have shown that substantial prison terms, as opposed to moderate or short prison terms, are not effective in reducing crime, including sex offences, and do little to assist with the rehabilitation of offenders. Regarding mandatory minimum prison sentences in general, Dr. Anthony Doob, a highly respected criminologist, told the House of Commons committee in the Canadian Parliament in 2011, that "the evidence of (mandatory sentences) ineffectiveness is clear. Numerous studies have been carried out in various countries demonstrating that mandatory minimum penalties ... do not deter crime".

In light of the above references, the author is of the view that moderate or short prison terms/punishment, as opposed to substantial terms, will be more effective in curbing the commission of sexual offences.

Venues for rehabilitation/treatment programs for sexual offenders in the criminal justice system

Sex treatment programs are available for male and female offenders in various venues in the criminal justice system. The venues for treatment for federal male and federal female prisoners are available only in some penitentiaries, community correctional centres ('half-way houses'), community residential facilities ('half-way houses'), federal parole offices, provincial probation offices (when the prison sentence is 2 years, and a period of probation follows), and in the community itself.

Concerning male and female offenders sentenced to provincial or territorial correctional facilities, unfortunately, as with penitentiaries, treatment programs are available only in some correctional facilities. For example, in Ontario, 4 of the 29 correctional facilities offer sex treatment programs. However, in the last decade, more probation offices in the provinces and territories have been offering in-house sex offender programs. As well, all probation officers in Canada and Ontario parole officers can refer their clients to sex programs in the local community.

REHABILITATION/TREATMENT PROGRAMS IN THE CRIMINAL JUSTICE SYSTEM

Different types of sex offender treatment programs operate in Canada. The primary goal of these programs is to help prevent sex offences, by rehabilitating the offender and therefore protecting the public. The major programs are: cognitive-behavioral therapy; relapse prevention therapy; 'circles of support and accountability' (CoSA); programs for violent sex offenders; and sex treatment programs for female offenders. It is noteworthy that sex offender treatment programs do not cure the offender, but rather help them control their inappropriate sexual behavior.

1. **Cognitive-Behavioral Therapy** (CBT) is appropriate for sex offenders in custody and those being supervised in the community, subject to a conditional release. It involves changing attitudes; challenging cognitive distortions; addressing general self-regulation skills, such as problem-solving; improving sexual, intimate and social relationships; managing affective states, developing adaptive cognitive processes; developing the ability to empathize with the victim, and addressing sexual self-regulation, such as reducing deviant behaviour. (FN#1)

2. **Relapse Prevention Therapy** (RPT), like CBT, is also appropriate for sex offenders in custody and those being supervised in the community on a conditional release. It is a self-control maintenance program and is an adjunct to CBT. The two main objectives of RPT are (1) to teach offenders to recognize risky or problematic situations that could lead to reoffending, and (2) to teach appropriate coping skills to deal with such high risk situations. (FN#2)

3. **'Circles of Support and Accountability'** (CoSA), are restorative justice programs that are available for sex offenders who have been released into the community from a penitentiary on a conditional release (e.g., parole, statutory release) or are subject to a Peace Bond (Section 810.1 of the *Criminal Code of Canada*). CoSA links a sex offender with members of the community who offer support to the offender in the transition back to community life. CoSA also works with sex offenders to enable them to become fully accountable for their inappropriate sexual behaviour. (FN#3)

4. **Programs for Violent Sex Offenders** operate in penitentiaries vis-à-vis Correctional Service Canada and are designed to reduce violent sexual reoffending. There are 4 such programs, and CBT is an integral part of the treatment programs. The programs are: (a) T*he High Risk Intensity National Sex Offender Program*; (b) *The Moderate Intensity National Sex Offender Program*; (c) T*he National Sex Offender Maintenance Program* (this program helps the sex offenders maintain the skills they learn in the initial programs referenced above); and, (d) *Tupiq Program For Inuit Male Sex Offenders.* (FN#4)

5. **Treatment Programs for Female Sex Offenders** are appropriate for female sex offenders in custody and those being supervised in the community on a conditional release. These programs are designed to deal with the unique characteristics of female offenders. Namely, female sex offenders have commonly been physically and/or sexually abused as children.

   Female sex offender programs predominantly employ a victimization model and emphasize the relationship between the offender's own sexual and physical abuse experiences and her abusive sexual behavior. After completing the sex treatment program, the female offender at some juncture usually attends relapse prevention therapy to reinforce what she has learned. (FN#5)

On average, sexual offenders who receive treatment have a recidivism rate of about 10 %, compared to a 17 % recidivism rate for sexual offenders who do not receive treatment

A rich body of scientific research shows that sexual offenders' recidivism rates are reduced when the offenders receive treatment. On average, sexual offenders who receive treatment have a recidivism rate of about 10 %, compared to a 17 % recidivism rate for sexual offenders who do not receive treatment. (FN# 6) Unfortunately, few sex offenders participate in treatment programs. There are two main reasons for this. First, sexual offenders generally cannot be forced to participate in treatment. (FN#7) And secondly, related to the former reason, most sexual offenders, especially males, are in a state of denial regarding their culpability (FN#8). In the author's view, by making participation in sex offender programs mandatory, the offender and public safety would be better served...

It is important to note that research studies show that sex treatment programs delivered in the community appear to be equally effective to programs delivered in correctional institutions. In addition, research clearly shows that it is substantially less expensive to supervise sex offenders in the community than it is in prison (FN#10), providing support for the tenet that rehabilitation/treatment to sexual offenders in the community is fiscally more responsible. With the monies saved by offering programs

in the community, federal, provincial, and territorial governments can choose to invest in creating more treatment programs for sexual offenders, both in the community and in correctional institutions.

CONCLUDING COMMENTS-A PROPOSAL FOR LEGISLATIVE CHANGES

In light of persuasive research data, the author respectfully proposes the following amendments to the federal statutes - *Criminal Code of Canada* and the *Corrections and Conditional Release Act*; and to provincial and territorial correctional legislation:

Author's Preamble: These amendments have the objective of better protecting society and enhancing the rehabilitation/treatment of sexual offenders.

These amendments support the following major purposes of sentencing, as enunciated in Section 718 of the Criminal Code of Canada: denunciation of unlawful conduct; deterrence of the offender and other persons from committing offences; and assist in rehabilitating offenders.

Author's Proposed Amendments:

- Parliament should guarantee that all federal correctional institutions provide rehabilitative/treatment programs for both male and female sexual offenders.
- Provinces and the Canadian territories should guarantee that their correctional institutions provide rehabilitative/treatment programs for both male and female sexual offenders.
- Parliament and provincial and territorial Legislatures should make it mandatory for sexual offenders to participate in treatment programs for sexual offenders. However, the offender should not have to consent to ingesting medicinal drugs or be subject to intrusive medical procedures such as electroconvulsive therapy.
- Parliament should no longer prescribe mandatory minimum sentences for sex offences enumerated in the *Criminal Code of Canada*. Judges should be able to exercise their discretionary powers for sentencing.
- Parliament should reduce the prescribed maximum prison sentences for sex offences, without reducing their denunciatory and deterrent effect.
- Parliament should change the current maximum probation period from 3 years to 5 years, so that sexual offenders can be supervised longer in the community.
- Parliament should make it possible for a Judge to sentence a sexual offender to a period of probation following a federal penitentiary term of 2 years up to and including 4 years (i.e., not limit it to penitentiary sentences of 2 years as is currently the case.

FOOTNOTES

FN#1: "International Journal of Behavioral Consultation and Therapy", Vol. 8, No 3-4 (2013)

FN#2: Susan A. Cox, Ministry of Community Safety and Correctional Services, "Working With Sexual Offenders- Participants' Manual", (March, 2006)

FN#3: Mennonite Central Committee Ontario, "The Green Manual (Pilot Project)", (1995)

FN#4: Government of Canada, "Correctional Service Canada-Bulletin", (April, 2014)

FN#5: Government of Canada, "Correctional Services Canada – Bulletin", (March, 2015)

FN#6: John Howard Society of Alberta, "Sex Offender Treatment Programs", (2002)

FN#7: Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982 being Schedule B to the Canada Act 1982 (U.K.), 1982, c.11, Sec. 7 & 12, Corrections and Conditional Release Act, 1992, S.C. 1992, c.20, Sec. 88 (1) (a) (b)

FN#8: B. Meletsky, "Treating the Sexual Offender", (Newbury Park CA: Sage Publications, 1991)

FN#9: "International Journal of Behavioral Consultation and Therapy" (Vol. 8, No. 3-4, 2013)

FN#10: Michael Spratt, "Prison nation: What locking up more people is costing us", Nov 20, 2014

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RÉSUMÉ

THE CASE FOR LESS IMPRISONMENT/PUNISHMENT AND FOR MORE REHABILITATION/TREATMENT OF SEXUAL OFFENDERS IN THE CANADIAN CRIMINAL JUSTICE SYSTEM

Par Stepan Horodeckyj, B.A., B.Ed., J.D.

Cet article traite du fait que, par leurs pratiques de détermination de la peine, les tribunaux canadiens semblent préférer l'incarcération/le châtiment des délinquants sexuels plutôt que des mesures de réadaptation/de traitement; pourtant les recherches scientifiques n'appuient pas la doctrine voulant que des mesures substantielles d'incarcération/de châtiment de délinquants sexuels contribuent à une baisse des délits sexuels. Horodeckyj souligne qu'il existe divers traitements à l'intention des délinquants sexuels, hommes et femmes, au sein du système de justice pénale; il indique par ailleurs que ceux-ci ne sont pas toujours disponibles ni obligatoires. Il rapporte que de multiples études démontrent que des termes d'emprisonnement substantiels, par opposition à des termes modérés ou brefs, sont moins efficaces à réduire la criminalité, incluant les délits sexuels, et contribuent très peu à la réadaptation. L'auteur propose un certain nombre de changements législatifs, fondés sur les pratiques exemplaires inspirées de telles études.

THE STUDENT SPACE
L'ESPACE ÉTUDIANT

Forensic Odontology: A CRITICAL ANALYSIS OF BITE MARK ANALYSIS

BY SAVERIO DE MARCO
Criminal Justice (BA), Mount Royal University (BA)

THIS ARTICLE REPORTS ON RESEARCH UNDERTAKEN BY STUDENT-AUTHOR SAVERIO DE MARCO INTO THE CRITICAL ANALYSIS OF THE FIELD OF FORENSIC ODONTOLOGY, AN INTEGRAL PART OF FORENSIC SCIENCE, TO ASCERTAIN THE OVERALL RELIABILITY OF ITS USE IN CRIMINAL INVESTIGATIONS. RESEARCH OBTAINED FROM VARIOUS SOURCES INCLUDING CRIME SCENE PHOTOGRAPHS, PEER REVIEWED ARTICLES, TEXTBOOKS, LEGAL CASES, AND THE NATIONAL ACADEMY OF SCIENCES REPORT FOCUSED MAINLY ON HOW ONE HISTORICALLY QUESTIONED COMPONENT OF THE FORENSIC ODONTOLOGY FIELD - BITE MARK ANALYSIS - WAS USED IN THE THEODORE (TED) BUNDY CRIMINAL INVESTIGATION. THE RESEARCH CONDUCTED FOR THIS ARTICLE EVIDENCES THE FACT THAT BITE MARK ANALYSIS PROVED AN EXTREMELY USEFUL FORENSIC TOOL IN DETERMINING THE OUTCOME OF THE TED BUNDY CASE. HOWEVER, EVEN THOUGH THIS CASE HAS UNDENIABLY INCREASED THE OVERALL CREDIBILITY OF THE USE OF BITE MARK ANALYSIS, THIS LATTER HAS NOT YET RECEIVED THE NECESSARY ACCEPTANCE AND SUPPORT FROM THE SCIENTIFIC COMMUNITY TO BECOME A ROUTINE AND RECOGNIZED FORM OF ADMISSIBLE EVIDENCE IN CIVIL OR CRIMINAL INVESTIGATIONS.

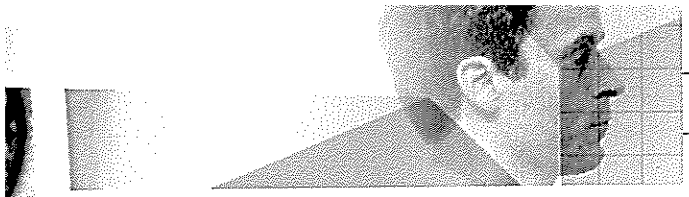
THE CCJA CONGRATULATES
L'ACJP TIENT À FÉLICITER
SAVERIO DE MARCO
as the recipient of a Mount Royal University scholarship, the benefits of which include CCJA membership and publication of the following article-style version of Mr. De Marco's essay, FORENSIC ODONTOLOGY: A CRITICAL ANALYSIS, in this issue of the Justice Report!

lauréat de la bourse d'études de Mount Royal University; les avantages de cette bourse incluent une adhésion à l'ACJP et la publication de l'article de M. De Marco : FORENSIC ODONTOLOGY: A CRITICAL ANALYSIS dans le présent numéro d'Actualités-Justice.

Forensic science is a broad and unique field comprising many complex parts used in various criminal investigations. Among them is the discipline known as forensic odontology. Identifying human remains and estimating age by dental characteristics are well-established applications of forensic science, have an accepted scientific basis and were used well before the prevalence of DNA technology. However, the whole area of the bite-mark-analysis component of forensic ondontology is a recent and still very controversial area. Several criminal cases have triggered a considerable amount of uncertainty regarding the overall credibility and admissibility of bite mark evidence; yet, in other cases bite marks proved the deciding factor in obtaining a conviction. Thus, while forensic odontology has been used in criminal investigations, there are still a number of objections surrounding the acceptability of bite mark evidence in terms of a credible scientific basis, which gives rise to another important consideration… just how susceptible is the interpretation of bite mark evidence to human error?

Definition of Forensic Odontology
(aka, Informally, Forensic Dentistry or Dental Forensics)

According to Siegel and Mirakovits (2010), forensic odontology can be defined as the examination of human dentition for a wide range of forensic purposes, such as deter-



mining the identity of an individual from human remains, approximating a person's age, and also for analyzing bite marks on victims and to identify victims from remains by means of their dental structure (p. 255).

Use of Bite Mark Analysis Component of Odontology in Law Enforcement

Siegel and Mirakovits (2010) suggest that odontology is an important part of the forensic sciences used in law enforcement to estimate the age of a living or dead person as well as to uncover the identity of human remains – used in criminal investigations, especially when there has been a tremendous amount of trauma/damage inflicted upon an individual's body and/or subsequent decay, which are often the result of criminal activity or natural disasters (p. 268). Odontology is also used to identify a suspected victim of abuse by analyzing their dentition and facial structure; it is also used to analyze the bite marks found on the victim of an attack – and/or in foods or other substances –and usually presented in court by way of expert testimony (p. 269).

Estimation of Age and Forensic Odontology Techniques

There are a few very technical, but well-known and commonly used methods in identifying the age of a living or deceased human being based on their existing teeth or dental remains. According to Forensic Dentistry (1997), "[a] spartic acid racemization has been used for age estimation based on its presence in human dentin. Most protein components in the body consist of L-amino acids, whereas D-amino acids have been found in bones, teeth, brain, and the eye's crystalline lens. D-amino acids are believed to have a slower metabolic turnover and subsequently a slower decomposition rate." (p. 3)

This research emphasizes the fact that human teeth possess D-amino acids, which subsequently slow the rate of decomposition after death. The fact that teeth decompose at a slower rate in comparison with the rest of the body is what allows experts in the field to use them as an accurate source in predicting an individual's age. Forensic Dentistry (1997) reports that "dental histology has been used for age estimations as well, largely based on the work of Gustafson" (p. 4). Forensic Dentistry (1997) also explains that "Maples (1978) reported on an improved technique of using dental histology for estimating adult age by using multiple regression analyses..." (p. 4).

Identification of Identity, Sex, and Cultural Background/Ethnicity Using Teeth

When there aren't enough distinguishable characteristics left to positively ID an individual from human skeletal remains, forensic odontologists are often called upon to assist in the process. An individual's dentition is regarded as being distinctly unique as a result of different factors, such as types of dental procedures performed, quantity, shape, position and thickness. Because teeth are one of the last body parts to decompose, dentition is one of the only significant and uniquely distinguishing components of the human body that can still be found intact after a prolonged post mortem period. According to Berketa, James, and Lake (2012), "as dental structures are the most durable of human tissue, the utilization of odontology continues to provide evidence of identification of victims subjected to the extremes of heat, trauma or decomposition" (p. 148).

Depending on the amount of time an individual has been deceased, a small amount of tissue may or may not be able to be extracted from the teeth and used in combination with other technologies to positively identify the individual. As a result of the potential for uncertainty, another method of obtaining the identity of an individual is to take post mortem dental X-ray images of the victim and compare the dentition with ante mortem X-ray images contained in a national databank until a positive identification is made. In the event that no tissue can be obtained from the teeth and/or no similar dental records can be found, it is still possible to identify the cultural background/ethnicity and sex of the individual in question. "Sex differences in dentition are based primarily on tooth size and shape. Male teeth are usually larger, whereas female canines are more pointed and have a narrower buccolingual width. There also appear to be greater differences in size between maxillary central and lateral incisors in females as compared to males" (Forensic Dentistry (1997) p. 10).

In regards to identifying the cultural background/ethnicity of an individual through dental remains, Forensic Dentistry (1997) suggests that both the mandible and dentition reflect cultural/ethnic characteristics. The most useful ethnic clue in dentition is that "shovel-shaped" incisors [are] found in most Asiatic Mongoloids and Amerindians and in less than 10% of whites and blacks. Tooth size and ... have [also] been listed as cultural/ethnic determinants" (p. 11).

IS BITE MARK ANALYSIS SCIENTIFIC?

Bite mark analysis is a controversial topic giving rise to the debate as to whether or not this type of evidence is accurate and reliable enough to be admitted into court as scientific evidence. Some, myself included, believe that dental record databanks, which are accessed in order to obtain ante-mortem X-ray images of the defendant for trial purposes, are unconstitutional and are in direct violation of the American fourth and fifth amendments or the Canadian equivalents of "the right to life, liberty, and security of the person and the right not to be deprived thereof" as well as "the right to be secure against unreasonable search and seizure" (Canadian Charter, 2011, p.1789-1802). Although bite marks have only recently gained prominence in the courtroom, there have been cases and investigations involving them for over 100 years.

This may be why the 1999 Forensic Medicine Sourcebook indicates that "in addition to the attempts to link marks left on human tissue to the dentition of the perpetrator, there were many instances of bites in food or other inanimate objects used as physical evidence to place the accused at the scene of the crime" (p. 302).

The research of Dr. Avon (2004), who is a specialist in oral pathology and oral medicine, and is also a professor at Laval University in Quebec City, Quebec indicates that bite mark patterns must be clearly recognizable and distinguishable in order for them to be used as evidence and that there is no single bite mark analysis method universally recognized by the scientific community. As a result, the particular method used would depend on the circumstances of each case and on the pref-

erence and ability of the analyst (p. 456). The major problem here is that there is no consistency; the method of analysis and comparison is therefore extremely flawed, circumstantial, and open to bias as well as to human error on the part of the analyst. Although no accepted scientific method of analysis exists, this evidence is still being allowed into court proceedings and being presented through expert testimony.

Defendants in Several Cases Convicted on the Basis of Bite Mark Analysis/Testimony

In the case of Ted Bundy, such evidence was used. Locke (2012) suggests that there are too many cases in which people were convicted and sent to prison as a result of bite mark evidence that proved to be wrong (para. 3). He goes on to list several cases in which the defendant was convicted based on bite mark evidence, and subsequently exonerated including: Willie Jackson (Louisiana), Calvin Washington (Texas), James O'Donnell (New York), Robert Lee Stinson (Wisconsin), Kennedy Brewer (Mississippi), Roy Brown (NY), and Douglas Prade (OH) (para. 3). Bite mark analysis is nonetheless a questionable form of forensics and its actual reliability and credibility will have to be definitively established at a scientific level before it is accepted as valid scientific evidence.

Credibility of Bite Mark Analysis in Determining Guilt

There is significant opposition to the credibility of bite mark analysis abroad. Lock (2012) tells us that "Bite mark evidence, as with most forensics, is a discipline based upon conclusions resulting from flawed inductive reasoning and an absence of true scientific and statistical validation. In addition to that, the discipline has been woefully lacking in controls on process, procedure, and competence. In the field of forensic odontology, as recently as 2010, the following problems still exist with bite mark analysis: New forensic odontologists have too little experience in bite mark analysis, there is no requirement to seek second (or third) opinions in bite mark cases, and there is no mandatory proficiency testing for certified forensic odontologists. The major issues are that human dentition has not been scientifically determined to be "unique', and human skin is so flexible, compressible, and expandable that it cannot be relied upon to accurately maintain and display an impression made on it." (para. 4-5)

Furthermore, the National Academy of Science Report on Forensic Odontology (n.d.) indicates that:

> The uniqueness of human dentition has not been scientifically established, the ability of the dentition, if unique, to transfer a unique pattern to human skin and the ability of the skin to maintain that uniqueness has not been scientifically established, the ability to analyze and interpret the scope or extent of distortion of bite mark patterns on human skin has not been demonstrated, the effect of distortion on different comparison techniques is not fully understood and therefore has not been quantified, and a standard for the type, quantity, and number of individual characteristics required to indicate that a bite mark has reached a threshold of evidentiary value has not been established. (as cited in Locke, 2012, para. 6)

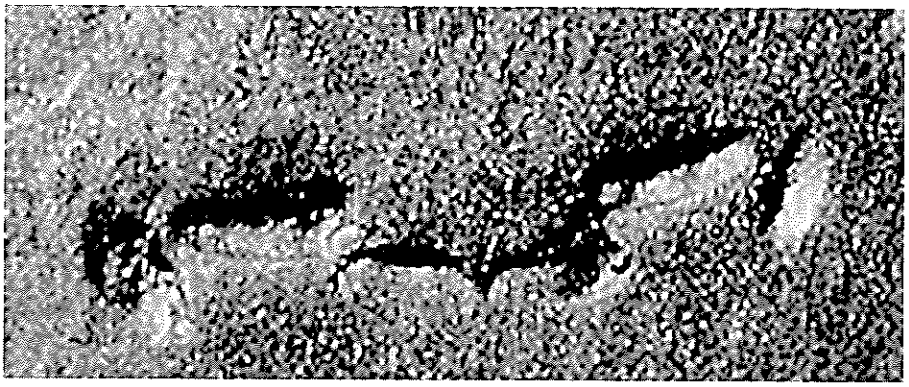
The summary paragraph on the subject of bite mark analysis taken from the National Academy of Science Report concludes that "in numerous instances, experts diverge widely in their evaluations of the same bite mark evidence, which has led to the questioning of the value and scientific objectivity of such evidence" (as cited in Locke, 2012, para. 6).

Ted Bundy Case Analysis and Bite Mark Analysis – A unique incidence...

Fisher (2013) outlines the trial information of Ted Bundy in detail and can be found in Appendix A. In regards to the provided trial information, the Forensic Medicine Sourcebook (1999) indicates that:

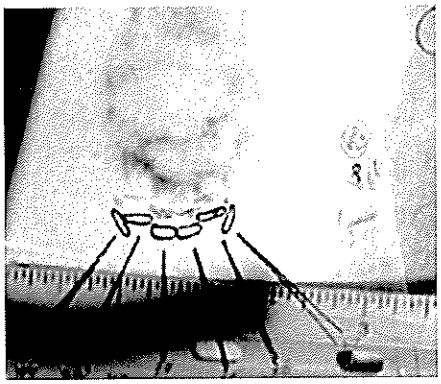
> In 1993, the justification for admitting scientific evidence was established as a standard that would become known as the "Frye test." This requirement has three components: The principle must be demonstrable; it must have been sufficiently established; and it must have gained the general acceptance of experts working in the particular scientific field(s) to which the evidence belongs. (p. 303)

It is very important to note that during the time period of the Bundy trial, there was no such standard for the admissibility of scientific evidence and the decision to include the bite mark evidence was made solely by the presiding judge – despite Bundy's lawyer indicating that there was no grounds for the warrant used in obtaining Bundy's dental impressions. Because DNA technology was not readily available during the time of Bundy's trial, the prosecution had very little physical evidence to work with and bite mark analysis was the only real tool the prosecution had that could potentially produce a conviction. By the time the trial was underway, the bite marks that were on Lisa Levy were almost completely healed so the only remaining evidence of the bite itself was in the form of several crime scene photographs. Ted Bundy had extremely unique teeth in the



Wax Impression of Ted Bundy's Lower Dentition http://globalwrong.files.wordpress.com/2012/09/wax_bite.jpg

sense that they were abnormally shaped, pointy, jagged, and uneven in length. The fact that Ted Bundy's teeth were so misshapen is what made them so clearly identifiable from the bruising of Lisa Levy's but-



Ted Bundy's Bite Marks on Left Buttock of Lisa Levy (Lower Dentition Emphasized)
http://globalwrong.files.wordpress.com/2012/09/bundy_bite1.jpg

tock and is what ultimately influenced the jury in their decision.

Although bite mark analysis still remains a very questionable and potentially unreliable form of scientific evidence, in this particular case, bite mark analysis proved to be extremely useful in placing Ted Bundy at the scene of the crime and ultimately produced a conviction for which he was given the death penalty. Despite all the skepticism and uncertainty surrounding bite mark evidence, it has never been publicly questioned whether this was a valid conviction by anyone other than by Ted Bundy himself who launched two separate trial appeals – Bundy v. State (1984) and Bundy v. State (1985). These appeals were both denied and eventually Ted Bundy's subsequent confessions before his execution confirmed what the prosecution team was able to prove beyond a reasonable doubt in court - that he did in fact murder Lisa Levy, the other sorority house member, as well as many other women. The Bundy case raised several questions including the constitutionality, reliability, and credibility of the evidence brought before the court, but in this particular case, the photographic evidence itself was extremely hard to refute as a result of the clearly unique and distinguishing features of the bite marks.

CONCLUDING REMARKS

The field of forensic odontology has been used for hundreds of years in helping identify human remains as well as the age of human beings, alive or deceased. These particular aspects of forensic odontology have been proven to be reliable and have gained the acceptance of the scientific community at large.

As we have seen, however, forensic odontology also includes a third component known as bite mark analysis. Although bite mark analysis has become prominent in the courtroom over the past 20 to 25 years, such as in Ted Bundy's case, there are many organizations, publications, and people that disapprove of this component. The major flaw in bite mark analysis is that comparing bite marks can in some cases be extremely circumstantial and therefore open to interpretation by analysts, creating the potential for a certain level of bias as well as the possibility of human error. In addition, this technique has no universally accepted method of analysis among the scientific community.

In addition, there have been many individuals that have been convicted based on bite mark evidence and subsequently exonerated due to its inaccuracy. The one true exception to all the speculation around bite mark unreliability is the case of Ted Bundy, due to the profound similarities between Bundy's dentition and the marks found on Lisa Levy. Although the Bundy case added to the credibility of bite mark analysis, bite mark analysis has not yet received the necessary credibility from the scientific community in order for it to become an accepted and universally recognized form of admissible evidence in a civil or criminal investigation. The fact that an individual's own dental records can be obtained through a database without their consent and be used against him/her in a court of law raises another set of other issues that go beyond the scope of this article, such as constitutionality and possible infringement on individual rights to a fair trial. ••

Ted Bundy's Trial and Forensic Odontology: A Summary

BY SAVERIO DE MARCO

The process of comparing a bite mark to a known set of teeth is not unlike the identification of latent fingerprints, footwear, and tire track impressions. Bite mark wounds are found on victims of murder, rape, and child molestation. This type of crime scene evidence is preserved by life-size photography, tooth mark tracings onto transparent sheets, and dental casts of the impressions themselves. A suspect might be asked to bite down on a pliable surface for an impression sample, have a cast made of his teeth, or both. Usually, connecting a suspect to a victim through expert bite mark testimony will be enough evidence, by itself, to sustain a criminal conviction. For this reason, bite mark evidence must be 100 percent reliable. Unfortunately, it is not even close to that.

The field of bite mark identification exploded in the 1980s, and hundreds, if not thousands of defendants have gone to prison since then on the strength of bite mark testimony. Although bite mark identification had been a recognized branch of forensic science since 1970, it was the 1979 trial of serial killer Ted Bundy in south Florida that put this form of identification on the map the way the O. J. Simpson case, in the mid-1990s, popularized DNA profiling.

After killing 30 to 100 college-aged women in the states of Washington, Utah, and Colorado, Theodore Bundy entered a Florida State University sorority house in Tallahassee where he sexually assaulted and murdered two Chi Omega sorority members. The police arrested him a short time later in a stolen car, and then put him on trial for 1st degree murder in Dade County.

The Dade County prosecutor had plenty of nonphysical evidence against Bundy, but it was circumstantial and didn't place him in the Chi Omega murder room. The killer had left a hair follicle on a crime scene stocking mask that looked similar under the microscope to samples from Bundy's head. But hair identification wouldn't be enough by itself to carry a conviction. The rapist had left traces of semen, but these murders were committed more than ten years before the dawn of DNA analysis.

If the Dade County prosecutor had any chance of convicting Bundy, he would have to connect him to the murder scene through a bite mark wound on one of the victims. To do that, the prosecutor called on Dr. Richard Souviron, the chief odontologist for the Miami-Dade County Medical Examiner's Office. He also enlisted the services of Dr. Lowell J. Levine, a forensic dentistry consultant to the New York City Medical Examiner's Office. To round out his battery of experts, the prosecutor brought in Dr. Norman Sperber, an odontologist with the San Diego and Imperial County Medical Examiner's Office in California. These three forensic experts comprised the nation's most renowned bite mark analysts.

Dr. Souviron took the stand and testified that the sorority house attacker had left a post-mortem double-bite mark on one victim's left buttock. He had bitten once, turned sideways, them clamped down again. The killer's top bicuspids and his lateral and central incisors had remained in the same position, but he had made two wound brackets with his lower front teeth. When he photographed Ted Bundy's teeth, Dr. Souviron noticed they were of uneven length, chipped, and oddly aligned, factors that helped individualize the defendant's bite mark pattern. To show that the teeth matched the murder scene wound, Dr. Souviron laid a photograph of Bundy's teeth, depicted on a transparent sheet, over an enlarged photograph of the bite mark. The bottom edges of Bundy's teeth lined up perfectly with the crime scene wound.

Dr. Norman Sperber and Dr. Lowell Levine took the strand and lent their expertise to the identification. Bundy, representing himself brought in his own dental expert, an odontologist from Maryland who testified that "the dental pattern [bite mark] is one I'd expect to find in 20 percent of the population of male Caucasians." The defense expert didn't say the bite mark on the victim couldn't have been Bundy's, he just wasn't willing to identify the wound as coming from the defendant to the exclusion of all others.

The Dade County jury found Ted Bundy guilty, the judge sentenced him to death, and ten years later, Bundy was executed. Before his execution, he confessed to the sorority house killings and dozens of other lust murders. The Ted Bundy case established the credibility and usefulness of forensic bite mark analysis and for a while placed it on the same level, in terms of reliability, as latent fingerprint identification. But following a series of high-profile misidentifications in bite mark cases, this form of impression analysis is no longer considered as reliable as latent fingerprint identification. Today, in most states, odontologists are not allowed by law to state unequivocally that a defendant is the source of a bite mark. The most these experts can say is that the questioned bite mark is consistent with having been made by the defendant's teeth.

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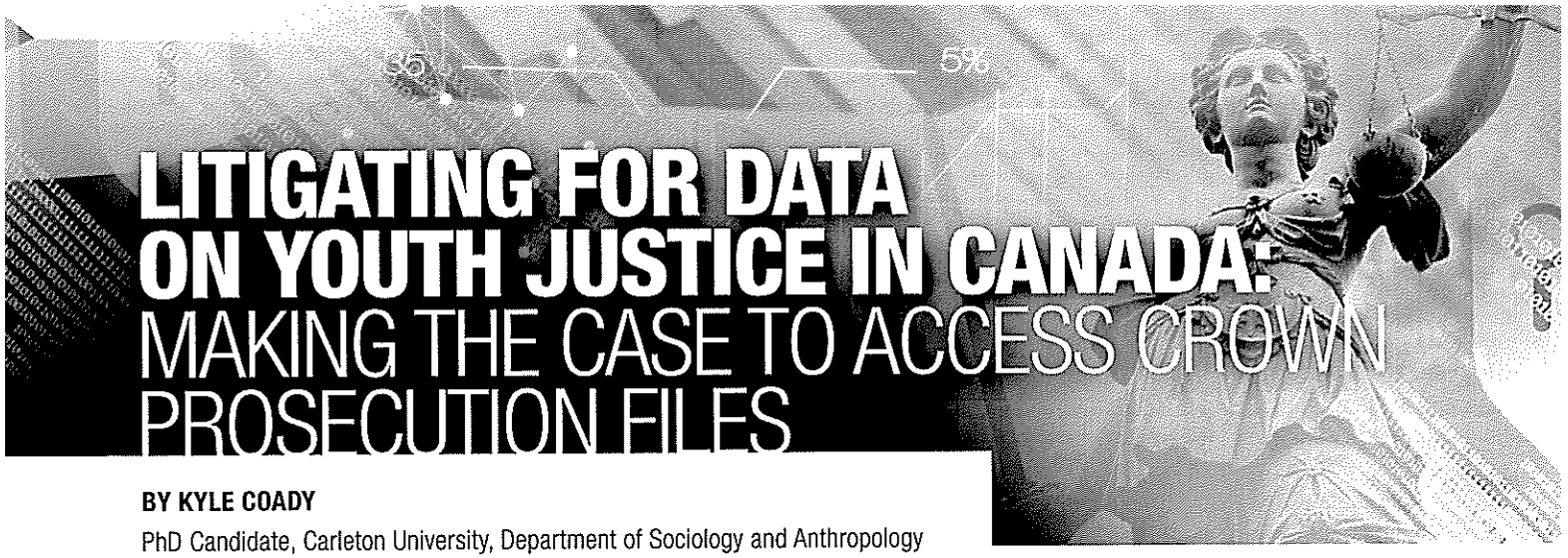
RÉSUMÉ

FORENSIC ODONTOLOGY: A CRITICAL ANALYSIS OF BITE MARK ANALYSIS

Par Saverio De Marco, Criminal Justice (BA), Mount Royal University (BA)

Cet article fait le point sur la recherche entreprise par l'auteur étudiant Saverio De Marco, portant sur l'analyse critique dans le domaine de l'odontologie médico-légale, une partie intégrante des sciences médico-légales, dans le but d'assurer sa fiabilité globale dans le cadre d'enquêtes criminelles. Des études obtenues de diverses sources, dont des photographies de scènes de crime, d'articles évalués par les pairs, de manuels, de comptes-rendus d'affaires juridiques et du Rapport de l'Académie nationale des sciences des États-Unis, mettent surtout l'accent sur un aspect historiquement remis en question de l'odontologie médico-légale, en l'occurrence les marques de morsures, utilisées dans le cadre de l'enquête criminelle afférente à Theodore (Ted) Bundy. Les études menées aux fins de cet article démontrent que des marques de morsures se sont avérées un outil médico-légal des plus utiles pour parvenir au dénouement de l'affaire Bundy. Toutefois, bien que cette affaire ait incontestablement contribué à accroître la crédibilité d'ensemble de l'analyse des marques de morsures, celles-ci n'ont pas encore reçu l'acceptation ni l'appui nécessaires de la communauté scientifique pour devenir une forme de preuve admissible dans les enquêtes en matière civile ou criminelle.



LITIGATING FOR DATA ON YOUTH JUSTICE IN CANADA: MAKING THE CASE TO ACCESS CROWN PROSECUTION FILES

BY KYLE COADY

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THE STRATEGIES AND CHALLENGES OF SECURING EMPIRICAL DATA ARE REGULARLY DOCUMENTED TO CELEBRATE ACCESS, INFORM THE RESEARCH COMMUNITY OF NEW TECHNIQUES, AND EXPOSE NOVEL SOURCES OF DATA. A WIDELY UNKNOWN DATA COLLECTION STRATEGY USES LITIGATION TO ACCESS RECORDS PRODUCED BY THE YOUTH CRIMINAL LEGAL SYSTEM, WHICH CAN CONSIST OF PROSECUTION FILES COMPOSED OF POLICE STATEMENTS, CASE SYNOPSES, VICTIM STATEMENTS, AND OTHER TEXTUAL DOCUMENTATION OF LEGAL EVIDENCE. USING THIS DATA COLLECTION STRATEGY IN CANADIAN YOUTH JUSTICE RESEARCH, COADY REVIEWS HOW A RESEARCHER CAN MAKE AN APPLICATION TO A COURT AND USE THE *YOUTH CRIMINAL JUSTICE ACT* TO PETITION A JUDGE TO GRANT ACCESS TO YOUTH RECORDS FOR RESEARCH OR STATISTICAL PURPOSES. DRAWING ON HIS OWN EXPERIENCE AND MAPPING THE ARGUMENTS THAT HE USED WHEN SUCCESSFULLY LITIGATING FOR DATA, THE AUTHOR PRESENTS A STRATEGY FOR ACCESSING DATA ON YOUTH CRIMINALIZATION IN CANADA.

Prosecutor-selected youth diversion is one mode of legal processing in the current youth legislative framework that attempts to channel certain young people away from the formal legal system. Little work, however, empirically explores youth legal system processing once the carriage of a youth legal file lies with the Crown. To undertake an empirical study of youth diversion, I aspired to use prosecutor case files to assess Crown-selected post-charge youth diversion in Ottawa, Ontario. In order to answer questions about the types of cases, case factors, criminalized behaviours, and differential legal system responses among diverted and prosecuted youth, case files provided a unique source of data to empirically assess the Crown's evidence in a legal matter. This evidence includes in-depth synopses, police, victim, and witness statements, and textual records of all legal evidence in a criminal matter involving a young person.

Making an application to a judge for access to youth records for research or statistical purposes

In order to access Crown case files, I devised and implemented a strategy to make an application to a youth court and litigate for access to case files. The right to make such an application is set out in the *Youth Criminal Justice Act* (YCJA) (2002, s. 119), whereby anyone can petition a judge to grant access to youth records for research or statistical purposes. My description of this approach is important as using this legal application to access data has not been clearly articulated in criminological or socio-legal literature. In addition, using Crown prosecution files is both unobtrusive and represents a hidden source of data concerning youth legal system processes. Sharing my strategy and arguments here will make the strategy available to other researchers of youth criminalization. In presenting my strategy, I follow the convention in Freedom of Information and public criminology literatures by documenting the steps in the process and chronicling some practical challenges.

A contested application for access to youth case files

Crown prosecution files can be legally referred to as records (see YCJA 2002, Part 6). The *Youth Criminal Justice Act* controls and restricts access to records (see Bala & Anand, 2009; YCJA 2002, s. 118) but does not prohibit access (Tuck-Jackson, 2015). In certain circumstances, access to records can be given after a successful application to a judge. For my research, I made a formal application to the Ottawa youth court by engaging a section of the *Youth Criminal Justice Act* (2002, s.119 (1) (s)) that allows records to be available to: any person or member of a class of persons that a youth justice court judge considers has a valid interest in the record, to the extent directed by the judge, if the judge is satisfied that access to the record is

(i) desirable in the *public interest* for research or statistical purposes, or

(ii) desirable in the interest of the proper administration of justice (my italics).

My application was contested by the Crown and the Ottawa Police Service on privacy grounds and resource grounds. There were privacy concerns when conducting research with vetted Crown files free of personal identifiers, and there were resource concerns as there was no process or fee schedule associated with the retrieval of files.

This meant that I not only had to identify the statutory authority to access the data but also had to make the legal argument to a judge that my requested access to prosecution files was valid and in the public interest for research or statistical purposes.

Regardless of whether the application is contested or proceeds on consent, making an application requires a number of background and supporting documents. These documents provided contextual support when presenting my case to the opposing parties and to the judge. Some of this contextual support included: a brief synopsis of my research project; a summary of my oral arguments; affidavits from the Research Ethics Board and my thesis supervisor; a list of pertinent case law; and a complete bibliography. The summary of my arguments and the research synopsis brought clarity to my research goals and to my purpose for accessing case files. The affidavits provided a core point of reference in the final judgment. The Director of the Ethics Review Board attested to the fact that my research was governed by the Tri-Counsel Policy Statement (2010) and inasmuch follows and respects those guidelines especially when it comes to protecting identities, vetting, and storage. The affidavit of my thesis supervisor attested to the ethical safeguards and practices to protect privacy and pointed out the standards of doing research in accordance with theoretical, topical, methodological, and epistemological principles that govern social science research.

MAKING TWO LEGAL ARGUMENTS: PROVING A VALID RESEARCH AND PUBLIC INTEREST TO ACCESS CROWN CASE FILES OF YOUTH

My argument for accessing Crown case files was rooted in making an important contribution to social science research on youth diversion. Despite a clear statutory gateway to access youth records, there is little common law and virtually no scholarly descriptions of such a gateway to access data. The statutory law and case law are clear that there needs to be a "valid interest in the record" (YCJA, 2002, s. 119(1)(s)); R. v. N. Y., [2008] O.J. 1979 at para 7) but I nuanced this by arguing, before a youth court judge in open court, that my use of the case files constituted a valid interest, as a research interest and a valid public interest.

1. A valid research interest in Crown case files

To show that I had a valid research interest in the case files, I drew on topical and methodological literature on youth justice to highlight my research contribution. I used Canadian and American research to show that little is known about post-charge diversion in Canada outside of case processing statistics. I echoed the common achievements of rigorous social scientific research which promises to provide a thorough explanation of youth diversion, address the dearth of Canadian research, commence jurisdiction specific discussions of professional practices, explore a contemporary legal system process, and rectify methodological, epistemological, and topical shortcomings of current research (see Anand 1999; Bala and Anand 2009; Doob, Marinos, and Varma 1995).

In foregrounding the goals of research, it was my position that the goals of research needed to be considered by the judge given that "research or statistical purposes" was the gateway to access records. I felt that I could not argue that I had an interest in research without engaging the literature, the goals of my research, and the general goals of rigorous research in the field. Using research goals to show valid interest is not set out in existing case law but I wanted to establish that I was knowledgeable in the field, the field is in need of empirical work, and that my research had a specific focus that I was well-positioned to undertake. This allowed me to argue that the clear, realistic and achievable research goals must be legally considered. Identifying a specific focus for a specific project and for a specific period of time was important to my case as access has been refused when researchers ask for a standing order to access records (Statistics Canada, Canadian Centre for Justice Statistics v. British Columbia (Minister of Public Safety), [2008] B.C.J. No. 2523).

2. Valid public interest to obtain Crown case files on youth

I also argued that access to records for the purpose of research was in the public's interest. I noted the need for "considering and balancing the competing interests which may clash on access applications" (S.L. v. N.B. 2005, O.J. No. 1411, para. 54). Preoccupied with balancing interests, it was my position – like those using access to information legislation – that the spirit of balance must include what is needed for research and for the public while negotiating the extent of access with gatekeepers (Mopas and Turnbull 2011; Piché 2011). In making the public interest argument, I relied on the Preamble of the YCJA (2002). I noted that while the Preamble is not legally enforceable, it contains significant statements from Parliament about legislative values (Bala and Anand 2009; Tustin and Lutes 2006) and statutory interpretation, including the interpretation of the access to records provisions in Part 6 of the YCJA.

First, the Preamble of the YCJA encourages public access to information when it notes that "information about youth justice, youth crime and the effectiveness of measures taken to address youth crime should be publicly available" (YCJA, 2002). Because access to information on youth crime is legislatively endorsed and permissible, I argued that granting access to these records facilitates and enables the production of knowledge on youth crime and youth justice. Thus, it is important to enable and sustain knowledge production through rigorous research that is communicated in a public forum. I argued that not allowing access would not only bar access to records for a legitimate research endeavor, but in so doing also limit the production of public information on youth crime and justice, and therefore conflict with the Preamble.

Continuing to rely on the Preamble, I noted the legislative goal to limit severe forms of intervention and reduce the historical over-reliance on incarceration for non-violent young people (Bala, Carrington, and Roberts 2009; Barnhorst 2004). Diversion is one mechanism used by the legal system and endorsed in the YCJA to achieve these goals (Bala, 2003; Bala & Anand, 2009; YCJA, 2002). Accordingly, diversion must be investigated given the operational and policy declarations promoting its use. This is not to test whether legislation is being used as intended by Parliament but to empirically examine a process given the scholarly, legislative and jurisprudential claim that diversion is mobilized strategically to address historical problems.

After relying on the Preamble, I noted that research is in the public interest when transparency is fostered at the decisional level within the youth legal system. Transparency allows for more informed engagement in and with youth justice as it provides information for the public to consider and the scientific community to debate. My supervisor's affidavit reaffirmed this point when he wrote:

> [...] my graduate student's thesis will attempt to address this problem and is therefore expected to be of a great contribution to the advancement of scientific knowledge. It is of no doubt that transparency at the decisional level of prosecution is not only of great value to Canadian society but is also paramount to the production of knowledge and its quality within that specific field of research. As such, from an academic stand point, this research project is worthy of empirical investigation [...]

Having sketched some of the barriers and summarized the core arguments, given the space constraints of this article, it is important to briefly present what was strategically not presented in court or in the application. Some omissions included the theoretical inspirations for my work, messages of operational and policy change, challenges to prosecutorial discretion, and critiques of diversion. I felt that these discussions were outside of the scope of showing a valid research interest and the public's interest, but I was also concerned that presenting all possible scholarly debates may invite confusion, cause concern for the trajectory of the research, and provoke conflict if I was seen as a hostile and critical researcher.

I was eventually successful gaining access to prosecution files of Crown-selected diverted and prosecuted young people. These rich textual archives of police statements, case synopses, victim statements, and other textual documentary evidence compiled in the case have many virtues beyond that of accessing data. Litigating is a virtuous endeavor for researchers in that it engages the legal system and its functionaries with aspiring and established criminological work. In my case, the legal system had to consider the contribution to research, public interest, access to records, and the pursuit of transparency.••

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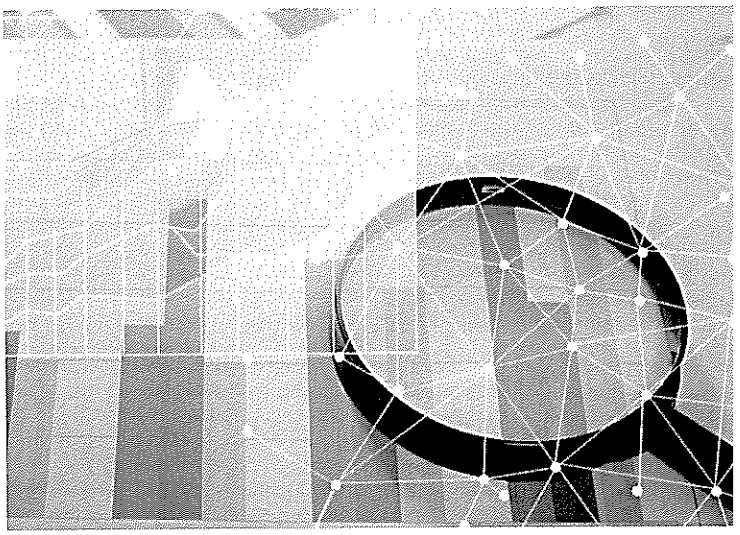


RÉSUMÉ

LITIGATING FOR DATA ON YOUTH JUSTICE IN CANADA: MAKING THE CASE TO ACCESS CROWN PROSECUTION FILES

Par Kyle Coady, doctorant, Carleton University, Department of Sociology and Anthropology

Les stratégies et les défis liés à l'obtention de données empiriques sont régulièrement invoqués pour célébrer l'accès à l'information, pour informer le milieu de la recherche de nouvelles techniques et exposer de nouvelles sources de données. Une stratégie de collecte de données largement méconnue consiste à passer par les tribunaux pour accéder aux dossiers produits par le système de justice des mineurs; il pourrait en l'occurrence s'agir de dossiers de la poursuite constitués de déclarations policières, de synthèses de cas, de déclarations de victimes ou autre documentation textuelle de preuves légales. Se servant de cette stratégie de collecte de données dans le système de justice des mineurs au Canada, Coady examine comment un chercheur peut saisir un tribunal d'une demande et invoquer la *Loi sur le système de justice pour les adolescents* pour demander à un juge de lui donner accès à des dossiers d'adolescents à des fins de recherche ou statistiques. Puisant dans sa propre expérience et exposant les arguments qu'il a invoqués pour réussir à obtenir des données, l'auteur expose une stratégie permettant d'accéder à des données relatives à la criminalité de mineurs au Canada.

The Lubicon Cree Nation Conflict and the Movement towards Peaceful Resolution in Canada

BY JESSICA SAVIOTTI

B.A., M.A.

ABOUT THE AUTHOR: Jessica is a recent graduate from the University of Ottawa, having obtained her Master's in Public Ethics. Prior to this, Jessica graduated from the University of Ottawa with an Honours Bachelor of Arts degree in Psychology (French immersion) with a minor in Social Sciences of Health. Moreover, Jessica holds a Certificate in law from the Civil Law Faculty. The following article is an excerpt from an essay written during her undergraduate degree and has been slightly modified in light of more recent events.

SAVIOTTI TAKES THE READER THROUGH THE LEGAL, MORAL AND ETHICAL IMPINGEMENTS THAT HAVE HISTORICALLY CHARACTERIZED CANADA'S ATTITUDE TOWARD THE LUBICON CREE NATION. THEIR SETTLEMENT IS IN LITTLE BUFFALO, CLOSE TO LITTLE BUFFALO LAKE AND LUBICON LAKE. SAVIOTTI NOTES THAT THE LUBICON PEOPLE TRADITIONALLY ENGAGED IN HUNTING, TRAPPING AND GATHERING, ACTIVITIES THAT WERE CULTURALLY, SOCIALLY AND ECONOMICALLY IMPORTANT TO THEIR CULTURE AND ALSO ONE OF A SMALL NUMBER OF REMOTE COMMUNITIES THAT HAVE NEVER SIGNED A TREATY AGREEMENT. HISTORICALLY, SAYS SAVIOTTI, THIS COMMUNITY PRACTICED SHARED DECISION-MAKING, ENJOYED PEACEFUL RELATIONS WITH OTHER FIRST NATIONS COMMUNITIES, AND HAD THEIR OWN LAWS AND LEGAL ORDER AND A 'FOR-THE-PEOPLE' GOVERNMENT. DUE TO THEIR SUI GENERIS RELATIONSHIP WITH THE GOVERNMENT, REPORTS SAVIOTTI, A MAJORITY OF NEGOTIATIONS TO CONTROL THEIR TRADITIONAL LANDS HAVE FAILED THROUGHOUT HISTORY AND CURRENTLY MORE THAN 70% PERCENT OF LUBICON TERRITORY HAS BEEN LEASED FOR FUTURE RESOURCE DEVELOPMENT, INCLUDING OIL SANDS EXTRACTION. THE LUBICON HAVE RECEIVED NO COMPENSATION IN RETURN, BUT HAVE SEEN THEIR LAND AND WILDLIFE POISONED AND PEOPLE MADE SICK BY THE RESULTING POLLUTION.

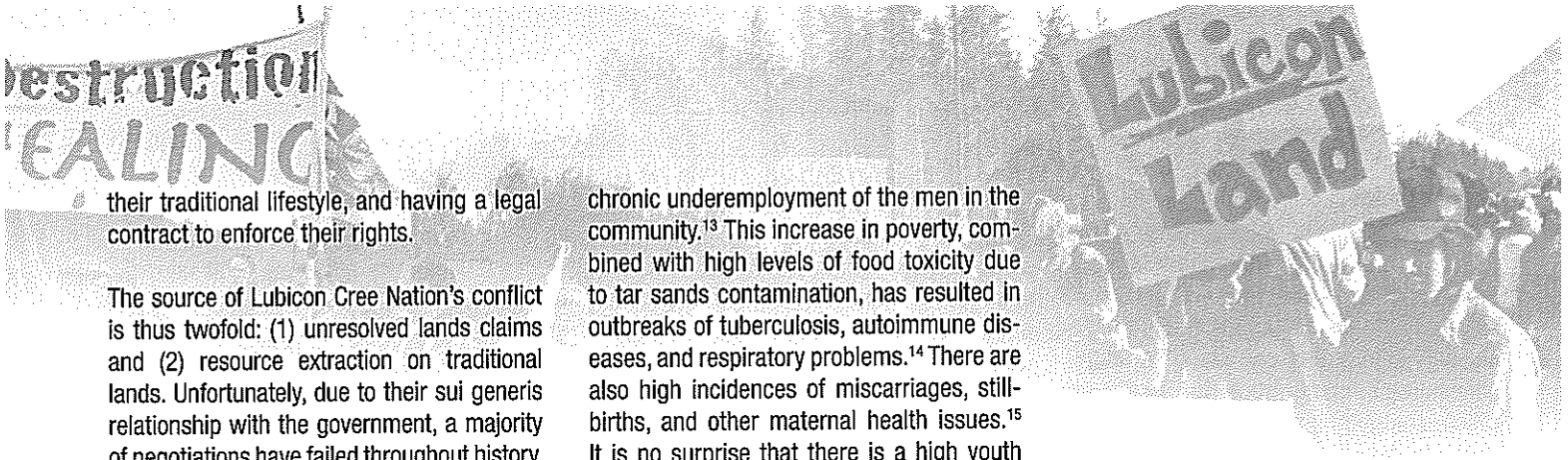
Recently, the well-being of Aboriginal Peoples in Canada has resurfaced as an important matter of public discussion, specifically regarding the recent Attawapiskat crisis in Northern Ontario. For many years, it has been a well-known fact that aboriginal health in this country is in a deplorable state compared to that of other Canadians. However, what is less known is the health conditions of another aboriginal community, the Lubicon Cree Nation of Northern Alberta. This article will attempt to shed light on the deep-rooted and complex relationship between the government and the Lubicon Cree Aboriginal community with regard to land claim issues and resource exploitation beyond their control. While a comprehensive picture of this relationship is beyond the scope of this article, a general understanding of the fact that these issues are all interrelated, will allow for a deeper reflection on the human rights violations that the Lubicon Cree have experienced. This is in an effort to ultimately recognize where this situation currently stands in order to bring some accountability to the forefront and to move forward with this long standing issue.

Background on the Lubicon Cree Nation Community

The Lubicon Cree Nation community population is about 500.[1] Their settlement is in Little Buffalo, close to Little Buffalo Lake and Lubicon Lake. The Lubicon people traditionally engaged in hunting, trapping and gathering. As with most aboriginal communities, these activities were culturally, socially and economically important to their culture.[2] As a remote community, they had peaceful relations with other First Nations communities.[3] Their government was 'for the people'[4]; they had their own laws and legal order and decision-making was shared within the Lubicon Cree community.[5] Today, the Lubicon Cree continue to be governed by a Chief, an Elder's Council, as well as family heads.

Unresolved Land Claims and Resource Extraction on Traditional Lubicon Cree Nation Lands

Due to the impact of Western European colonialism, aboriginals have a sui generis relationship with the government. However, this relationship has been aggravated further for the Lubicon Cree in particular, because they never signed a treaty, unlike the majority of aboriginal communities in this region at the time. This was because the Lubicon Cree Nation was the last of the Treaty Eight isolated communities that the Treaty Commissioners overlooked at the time of Treaty making more than 100 years ago.[6] Essentially, this means that they never legally ceded their land to the Canadian government. Considering that the Lubicons did not sign Treaty Eight, they do not receive any benefits of signing it, which could include having a reserve, being able to continue



their traditional lifestyle, and having a legal contract to enforce their rights.

The source of Lubicon Cree Nation's conflict is thus twofold: (1) unresolved lands claims and (2) resource extraction on traditional lands. Unfortunately, due to their sui generis relationship with the government, a majority of negotiations have failed throughout history. What makes First Nations land claims difficult in the first place is that both the federal government and the provincial government adamantly claimed that Treaty Eight extinguished aboriginal land title in Alberta, regardless of them not having signed the Treaty. In order to move forward with the unresolved land claims issue, the federal government and Alberta must agree to a settlement before it can be given to the Lubicon.[7]

As this issue remained in the hands of the province, Alberta began to authorize resource extractions without Lubicon consent. Once oil and logging began on their land, the Lubicon's problems evolved, as the Alberta government denied giving the Lubicon their reserve lands. It can be safely assumed that Alberta's economic growth was a large contributor in this decision, as the oil and gas industry has produced an estimated revenue of $13 billion dollars from the Lubicon land alone.[8] By 2002, there were already over seventeen hundred oil and gas well sites on traditional Lubicon lands[9] At present, the Alberta government has leased more than 70% of Lubicon territory for future resource development, including oil sands extraction.[10]

To put the effects of these developments into perspective, it should be noted that before 1979, the annual moose harvest was over 200, but by 1983, it had dropped to about 20.[11] Additionally, the annual income of a Lubicon trapper fell from $5000 to $400, and the welfare rate went from under 10%, to over 95% of the population.[12] All decisions regarding resource exploitation have been made without their involvement, and the resource extraction has all but destroyed their traditional way of life, their economic prospects and their health.

Socioeconomic and Health Effects of Resource Extraction

Studies show that spousal and alcohol abuse among the Lubicon is partially caused by the chronic underemployment of the men in the community.[13] This increase in poverty, combined with high levels of food toxicity due to tar sands contamination, has resulted in outbreaks of tuberculosis, autoimmune diseases, and respiratory problems.[14] There are also high incidences of miscarriages, stillbirths, and other maternal health issues.[15] It is no surprise that there is a high youth suicide rate as a result of despair within the community regarding their future prospects.[16] The Lubicon Cree Nation continues to be significantly disadvantaged, as they lack opportunities afforded to other aboriginal communities as well as non-Aboriginals, which has resulted in a number of human rights violations.

The Scope of Canada's Human Rights Duties: An overview of Canada's Federal Character, and Aboriginal Rights

Whether or not there is a solution for the Lubicon Cree's unresolved lands claims and the resource extraction is secondary to the human rights violations that are being committed in the process. In order to establish why it has become society's moral obligation to protect the Lubicon Cree against these human rights violations, it is important to briefly discern which codification in law attributes aboriginal rights at the national and international levels in the first place.

Canada's confederate character is designated in the *Canadian Constitution Act of 1982* and impacts almost every aspect of governance and society. The idea of federalism wasn't to subordinate the provinces; it was a system that afforded jurisdiction and a separation of power between provinces and the federal government. Section 91 of the Constitution grants residual law-making power to Parliament and provides an exhaustive distribution of legislative powers between the two levels of legislature under the listed enumerated grounds.[17] Moreover, the entrenchment of *The Charter of Rights and Freedoms* had a profound effect on Federal- Provincial relations through this "judicialization" of the Canadian political system.[18] The Charter not only placed limits on both legislative levels because they must structure their legislation to suit the Charter, but it also empowered the Courts through individual rights. This is an essential part of societal functioning because it prevents the government from infringing on human rights.

When examining aboriginal rights at the judicial level, there have been several landmark cases that have helped define land, treaty and human rights for aboriginals in Canada. Among them, there are two in particular that can be applied to the Lubicon Cree situation. First, In *R. v. Sparrow*, although the courts agreed that section 35(1) of the *Constitution*, which recognizes and affirms Aboriginal rights, is not absolute, it was acknowledged that "parliament is not expected to act in a manner contrary to the rights and interests of aboriginals"[19]. It is therefore clear that the primary objective to take aboriginal rights seriously so as to "uphold the honour of the Crown"[20]. Second, the statements made in Delgamuukw v. B.C., set a precedent for land claims issues. It was stated that under section 35 "the crown is under a moral duty" to enter into and conduct negotiations "in good faith" with aboriginal communities.[21]

International Law and Human Rights Doctrine

At the international level, various declarations and legal conventions have also been issued during the past fifty years in order to protect human rights[22]. For one, the Universal Declaration of Human Rights (UDHR), for example, makes specific reference to economic and social rights in article 16 and articles 22-27[23]. Economic, social and cultural rights may include a right to education, the right to basic living standards, equality, and the protection against discrimination. In the UDHR, "oppression" is depicted in terms of freedom, specifically "freedom from want". This can be understood as a person's right to "health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services."[24]

This sentiment is also conveyed in the Declaration on the Rights of Indigenous Peoples (UNDRIP), which was ratified by the UN General Assembly on September 13th, 2007. It sets forth "the minimum standards for the survival, dignity and well-being" of indigenous peoples under Article 43. This Declaration emerged as a response to profound state violations of inherent human rights of aboriginal peoples.

Although these are non-binding international instruments, which are limited by their lack of enforceability, the recognition of existing laws provides that Canada should interpret domestic law in light of Canada's international human rights obligations. However, the United Nations has constantly criticized Canada's failure to protect aboriginal rights based on these principles, conventions and human rights doctrines, specifically referring to the Lubicon Cree Nation's experiences. In 1990, the Committee ruled "historical inequities... and certain more recent developments... threaten the way of life and culture of the Lubicon Lake Band"[25]. Nonetheless, as evidenced above, under national and international law there exists a legal obligation and a moral responsibility to provide opportunities for health and adequate living standards to this community, regardless of the status on land claims and resource extraction.

A Step in the Right Direction

Despite the amount of time that it has taken for some form of restitution, there are many positive indicators that the Lubicon Cree relationship with the government is heading in the right direction.

In late December 2014, the Lubicon Lake Band signed a Negotiation Framework to "move forward with land claim negotiations that will lead to greater economic self-sufficiency and prosperity..." As stated on the Government of Canada AANDC News Release, this Framework was aimed at "advancing three priority issues identified by the Lubicon, the establishment of a reserve pursuant to Treaty; community construction on the future reserve lands; and resolution of Lubicon's claims to other treaty-related benefits"[26] (2014). This agreement was intended to demonstrate the government's commitment to the work necessary for future negotiations with the Lubicon. In March 2015, the Lubicon Cree won their case against PennWest Petroleum Ltd.[27] This recent win reaffirmed that the Alberta government still has a duty to consult and engage the community prior to granting private parties authorization to aboriginal lands and that these companies can still be held liable for their actions.

In addition to this, in August, one of the recommendations by the Truth and Reconciliation Commission's (TRC) final report was to implement the UNDRIP into law and public policy. However, prior to the elections, the federal government had chosen to recognize it solely as an "aspirational document"[28] This is not to say that the Conservative government did not recognize its importance, however, there were sections within this document that were declared unsuitable to implement within a democratic society, as it would allow for the prioritization of aboriginal rights over all others.[29] Nonetheless, with the newly elected provincial NDP government and the federally elected Liberal government, there appears to be a stronger political initiative towards aboriginal reconciliation. This was demonstrated when the Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs, reasserted Canada's commitment to adopting UNDRIP[30]; as well as when Premier Notley made a formal apology to aboriginals for the role that Alberta played in Canadian residential schools in support for the call on a national inquiry for missing and murdered aboriginal women.[31]

The recent Truth and Reconciliation Commission of Canada report is an explicit reminder of the government's fiduciary responsibility to aboriginal peoples. Melina Laboucan Massimo, a Lubicon Cree First Nation and vocal advocate for aboriginal rights, has commended the Alberta government for their revitalized efforts to improving aboriginal life.[32] However, although reconciling aboriginal relationships was emphasized in the Liberal government's platform, it is now more important than ever that their words are turned into action and that they work with the provinces to help overcome the intergenerational barriers that aboriginal peoples are currently experiencing.

The complexity of the sui generis relationship that aboriginal communities have with the government is not easily understood nor explained. But it can now be said with great optimism that at least this community in particular may be able to look at a better future with the above-mentioned legal and political advancements. Hopefully, this will reduce and eventually help to eliminate the human rights violations experienced by the Lubicon Cree Nation that resulted from unresolved land claim issues and subsequent resource extractions, which has plagued this community for so many years.••

RÉSUMÉ

THE LUBICON CREE NATION CONFLICT AND THE MOVEMENT TOWARDS PEACEFUL RESOLUTION IN CANADA

Par Jessica Saviotti, B.A., M.A.

Saviotti amène le lecteur a considérer les empiétements d'ordre juridique, moral et éthique qui ont historiquement caractérisé l'attitude du Canada envers la Nation crie du Lubicon. Les Cris se sont établis à Little Buffalo, près des lacs Little Buffalo et Lubicon. Saviotti souligne que les Cris du Lubicon s'adonnaient traditionnellement à des activités de chasse, de trappage et de cueillette - des activités ayant une importance culturelle, sociale et économique pour leur culture. Ils constituaient également l'une des rares collectivités éloignées à ne jamais avoir signé un accord de traité. Historiquement, dit Saviotti, cette collectivité s'adonnait à un processus en cpmmun de prise des décisions, jouissait de relations pacifiques avec d'autres Premières nations, et était dotée des ses propres lois, de son propre ordre juridique et d'un gouvernement « pour le peuple ». Selon Saviotti, en raison de leur relation unique avec le gouvernement, une majorité des négociations destinées à contrôler leurs terres traditionnelles ont échoué tout au long de l'histoire et, à l'heure actuelle, plus de 70 % du territoire des Lubicons a été loué sous bail à des fins de développement futur des ressources, incluant l'extraction de sables bitumineux. Les Lubicons n'ont reçu aucune compensation en retour, mais ils ont été témoins de l'empoisonnement de leurs terres et des animaux sauvages ainsi que de maladies affectant les gens en raison de la pollution occasionnée.

FOOTNOTES

1 Ominayak, 111

2. Brown, 152

3 Lubicon Lake Nation, "Our People, Our Territory"

4 Lubicon Lake Nation, "Governance"

5. Lubicon Lake Nation, "Traditional Lubicon Lake Nation Governance"

6. Huff, 161

7. Ferreira, 25

8. Ibid, 112

9 Ominayak, 111

10. Amnesty International, "The Lubicon Cree: A Case Study in Ongoing Human Rights Violations"

11. Friends of the Lubicon Cree, "Comments of the Lubicon Lake Indian nation…"

12 Friends of the Lubicon, "Background: The Destruction of the Lubicon Cree"

13. Ibid, 157

14. Friends of the Lubicon, "Background: Destruction of the Lubicon Cree"

15. Friends of the Lubicon, "Background: The Destruction of the Lubicon Cree"

16. Ibid.

17 Government of Canada, 4

18 Caron and La Foret, 39

19 Hurley, Mary C. (a), 3

20. Ibid

21. Hurley, Mary C., 16

22. Fagan, "Human Rights"

23 The Universal Declaration of Human Rights, Article 16-27

24 The Universal Declaration of Human Rights, The Preamble

25 Kairos Canada The Lubicon Cree "

26. Government of Canada "News Release."

27 Wohlberg, 2015

28 APTN National News, 2015

29 Nunatsiaq News, 2015

30. Aboriginal Affairs and Northern Development Canada, 2015

31. Bellefontaine, 2015

32 Louwe, 2015

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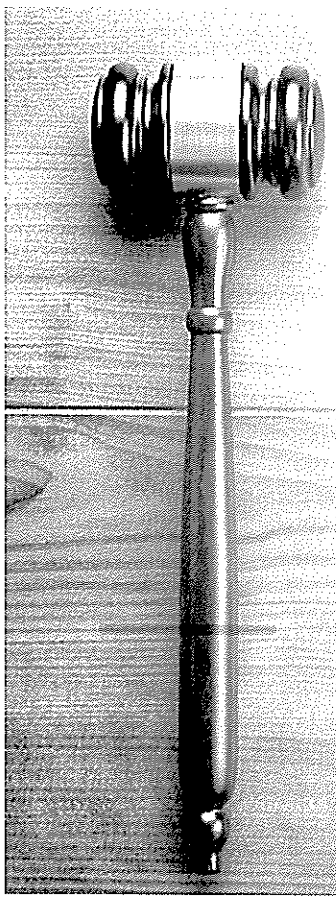

Presumed Guilty: wrongful convictions in Canada

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NOTING THAT THE PRESUMPTION OF INNOCENCE IS AN IMPORTANT LEGAL PRINCIPLE IN CANADA, AND CALLING FOR GREATER ACCOUNTABILITY AMONG AGENTS WITHIN THE CANADIAN CJS, STUDENT-AUTHOR BRANDI CHRISMAS EXPLORES THE ISSUE OF WRONGFUL CONVICTIONS IN THIS COUNTRY. DEMONSTRATING THAT 20% OF ALL CONVICTIONS IN CANADIAN CRIMINAL COURTS ARE WRONGFUL, CHRISMAS REPORTS ON SEVERAL KNOWN ISSUES/PROBLEMS THAT CONTRIBUTE TO WRONGFUL CONVICTIONS. CHRISMAS ALSO PRESENTS A NUMBER OF REASONS TO EXPLAIN WHY SOME ASPECTS OF MEASURES ALREADY IN PLACE TO PREVENT WRONGFUL CONVICTIONS COULD BE IMPROVED AND ALSO EXPLORES WHY PAROLE CONDITIONS BECOME A CATCH-22 FOR THE WRONGFULLY CONVICTED.

Presumption of innocence is an important legal principle in Canada. But the question of how many people are actually innocent of criminal allegations despite being convicted in a court of law remains unknown. The old and generally accepted aphorism, by famous jurist Sir William Blackstone (1723-1780), "it is better that ten guilty persons escape than that one innocent suffer"(Harvard Law Library, 2016), infers that criminal convictions are final and barely questionable. Appeal processes exist, however, but they can be costly and can take many years. In light of a growing awareness about evidential and systemic flaws in our legal system, perhaps it is time to question a system which allows for innocent people to be convicted. Wrongful conviction is defined as when an individual has either pled guilty to criminal charges or has been tried and found guilty in a criminal court but is innocent. (Huff, Rattner & Sagarin, 2016 p. 226).

20% of all convictions in Canadian criminal courts are wrongful

Holmes (2001) contends that up to 20% of all convictions in Canadian criminal courts are wrongful. Factors leading to wrongful convictions can include rushed judgments, eyewitness error, erroneous forensic science, false confessions, tunnel vision, the use of jailhouse informants, professional and institutional misconduct and racial bias (Campbell & Denov, 2016, p. 226). These elements can often be exacerbated by public pressure on the police and prosecutors, especially in high profile cases, to find suspects and charge them (Chrismas, 2013). Simply being in the wrong place at the wrong time has resulted in innocent people being caught up in police investigations and being wrongfully convicted (Lockyer, 2011). Justice is also averted when people admit to crimes they did not commit, either to plea bargain for lesser charges or when facing parole tribunals where admitting guilt is their only hope of early release.

Erroneous forensic science has led to wrongful convictions

The phenomenon of 'rush to judgment' is illustrated in the case of Bill Mullins Johnson, who was convicted and charged with his niece's murder when she actually died of natural causes and no crime ever took place (Lockyer, 2011). Erroneous forensic science has led to the wrongful conviction of Steven Truscott, convicted in 1959 of the rape and murder of Lynn Harper in Clinton, Ontario when the victim's injuries were allegedly exaggerated in order to shock the jury (Fifth Estate, 2015). Erroneous forensic science can occur through investigators' inadvertent human error, sloppiness, exaggeration, misinterpretation, bias or deliberately tampering with the evidence (Campbell & Denov, 2016, p. 228). Advancing science has also led to reversing wrongful convictions. In his book *Canadian Policing in the 21st Century*, Robert Chrismas explains, "DNA is the scientific advance that has cleared and continues to clear many wrongfully convicted people" (2013, p. 49). Public pressure to solve crimes and arrest suspects can lead to tunnel vision, on the part of the investigators (Chrismas, 2013, p.47). This is shown in the case of Steven Truscott as he was taken into custody within one day of a murder that he did not commit, and convicted 15 days later. Once suspicion fell upon Steven Truscott, there was no discernable interest in anybody else by the police (Fifth Estate, 2015).

Other issues that have historically contributed to wrongful convictions

Eyewitness error has contributed to wrongful convictions because of fallible human memory and police interviewing techniques that influence witnesses' recollections through unconscious transference, and/or taking advantage of their natural uncertainty (Campbell & Denov, 2016 p. 227).False confessions are another form of powerful

evidence that has often led to wrongful convictions and can occur for a variety of reasons including pressure from the police, desire or notoriety or even fantasy (Campbell & Denov, 2016, p. 228).

Testimony of jailhouse informants, relied upon heavily in the past, is now generally viewed as unreliable. Jurors naturally give great weight to first-hand informant accounts; however, these informants often have much to gain and little to lose by lying in court (Campbell & Denov, 2016, p. 230). Professional and institutional misconduct is another factor that leads to wrongful convictions. It occurs through improper use of line-ups (a practice now abandoned entirely in Canada), withholding evidence considered favorable to the defense, using unreliable evidence and taking advantage of the vulnerability of the accused (Campbell & Denov, 2016, p. 230). Racial bias can also lead to wrongful convictions when erroneous cross-racial identification, stereotyping and social disadvantage are apparent (Campbell & Denov, 2016, p. 232).

The conviction review process through the Canadian Criminal Code

The Canadian criminal justice system has measures to prevent wrongful convictions; however, some elements could be improved. Allegations of miscarriages of justice are reviewed by the Federal Justice Department and if errors are detected in the original investigations or trials, cases are assigned to provincial justice ministers for possible action, at their discretion (Chrismas, 2013, p.49).The conviction review process through Canada's Criminal Code, Sections 696.1 to 696.6 allows for wrongly convicted individuals to ask the federal Minister of Justice to review their cases and determine whether a miscarriage of justice 'likely' occurred (Campbell & Denov, 2016, p. 236).

This is considered an extraordinary measure and these individuals must have exercised all of their rights of appeal, which could take many years, and there must be new matters of significance that were not previously considered; as a result, only a handful of cases are considered each year (Campbell & Denov, 2016, p. 236). When wrongful convictions have been acknowledged, the resulting public inquires have been disappointing as their recommendations are rarely implemented (Campbell and Denov, 2016, p. 237-8). Compensation has also been inadequate, usually based simply on the number of years a person needlessly spent in prison, which does not account for the anguish of having one's life ruined by a wrongful conviction (Campbell and Denov, 2016, p. 238).

Wrongfully convicted people are in a Catch-22 situation, as they must repent before being considered for parole

The first step towards rehabilitation includes expression of remorse in the form of acknowledgment of responsibility for one's crimes. Those who maintain innocence after conviction are perceived as not having accepted responsibility for their actions and therefore are more likely to reoffend, be more dangerous and are at risk to the community (Weisman, 2016 p. 258). If truly innocent of their conviction, they must lie and admit guilt in order to be considered seriously for early release. Programs that enhance an individual's eligibility for parole typically require the individual to first admit responsibility to the crime, even though it negates a claim of innocence (ibid).

Concluding Remarks

There must be greater accountability within the Canadian criminal justice system to avoid wrongful convictions (Campbell & Denov, 2016, p. 239). Wrongly convicted individuals need to be heard to truly understand the extent and impact of these cases and inspire substantial changes to the justice system. In 2005 the "Report on the Prevention of Miscarriages of Justice" by the Federal, Provincial and Territorial Prosecutions Committee Working Group, urged changes across Canada to combat issues in the justice system that have led to wrongful convictions (Chrismas, 2013, p. 47). It seems that the advancement of science and deeper understanding of the dynamics that can pervert the justice system are creating opportunities for reducing and correcting existing wrongful convictions.••

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RÉSUMÉ

PRESUMED GUILTY: WRONGFUL CONVICTIONS IN CANADA

Par Brandi Chrismas, étudiant au baccalauréat ès arts, faculté des arts, Université du Manitoba

Soulignant que la présomption d'innocence est un principe juridique important au Canada et réclamant un niveau de responsabilité plus élevé de la part des agents du système de justice pénale, l'auteur étudiant Brandi Chrismas se penche sur la question des condamnations injustifiées en ce pays. Démontrant que 20 % de toutes les condamnations dans le cours criminelles canadiennes sont injustifiées, l'auteur traite de nombreux enjeux ou problèmes contribuant à des condamnations injustifiées. Il invoque de nombreuses raisons pour expliquer comment certains aspects de mesures déjà en place pour prévenir des condamnations injustifiées pourraient être améliorés et il se demande pourquoi les conditions de libération conditionnelle deviennent un cercle vicieux pour les personnes victimes d'une condamnation injustifiée.

SELF-REPRESENTED ACCUSED (SRA) AND THE CRIMINAL PROCESS OF PLEA DISCUSSIONS

BY BILLY SPARKS

Juris Doctor – Schulich School of Law, Third Year

ONE PARTICULAR PRE-TRIAL PROCESS IN WHICH AN ACCUSED PERSON MAY NOT RECEIVE COUNSEL IS AT THE PLEA BARGAIN STAGE; YET PLEA BARGAINING, AKA PLEA NEGOTIATIONS/PLEA BARGAINING, BETWEEN CROWN PROSECUTORS (BOTH PROVINCIAL AND FEDERAL) AND A SELF-REPRESENTED-ACCUSED (SRA) IS NOT ALWAYS ACCESSIBLE. WHILE SELF-REPRESENTED ACCUSED ARE PERMITTED TO ENTER INTO PLEA NEGOTIATIONS, PROSECUTORS IN PRACTICE ARE RELUCTANT TO DEAL WITH THEM. ESTABLISHING SUBSTANTIVE FAIRNESS IN THE PLEA DISCUSSION PROCESS WOULD REQUIRE A POSITIVE OBLIGATION ON PROSECUTORS TO ENGAGE IN PLEA DISCUSSIONS WITH PEOPLE REGARDLESS OF THEIR ABILITY TO RETAIN COUNSEL. PLEA NEGOTIATIONS AS DISCUSSED IN THIS ARTICLE ARE THOSE CONDUCTED IN NOVA SCOTIA BY BOTH PROVINCIAL AND FEDERAL PROSECUTORS.

The criminal process of plea discussions and problems faced by those people who, for whatever the reason, do not have counsel is an important issue in the judicial system. There are additional areas in the criminal process where the self-represented accused (SRA) face challenges, but this article's focus is plea discussions between Crown prosecutors and the unrepresented accused. Plea negotiations in this article are those conducted in Nova Scotia by both provincial and federal prosecutors.

Although the self-represented-accused receive procedural fairness in the criminal justice system, this fairness is not substantive. Currently, self-represented-accused are permitted to enter into plea negotiations, but prosecutors in practice are reluctant to deal with self-represented individuals. In order for there to be substantive fairness in the plea discussion process, there must be a positive obligation on prosecutors to engage in plea discussions with people regardless of their ability to retain counsel.

Why would an accused person not be able to retain counsel?

A common misconception among the public is that everyone gets access to a lawyer when charged with a criminal offence. This is only partly true: the right to counsel is not an expansive right, and in many cases it is limited to counsel at the time of an arrest. In *R v Feeney*[1], Sopinka J. ruled an accused person is entitled to the following upon arrest, in order to satisfy their 10 (b) Charter right[2]: to retain and instruct counsel without delay, be informed of applicable duty counsel and legal aid systems, and have an opportunity to access immediate, free legal advice. This right under s 10 (b) does not extend to having counsel provided at all stages of the criminal trial process. Government funded counsel is available for those in need, but the criteria for those in need is very restrictive.

Is Legal Aid always accessible, and how is the need determined?

Additionally, a person will receive legal aid if they are accused of committing a criminal offence with complex legal issues. The determination of complexity is on a case-by-case basis. Factors considered when determining complexity, and the need for legal aid, is both the ability of the accused and the penal interests at stake. The guiding principle is that Legal Aid will be provided when necessary to ensure a fair trial.[3]

The plea bargain stage is one particular pre-trial process in which an accused person may not receive counsel

The implications of being self-represented in a criminal matter are not limited to the immediate charge. Any decision a SRA makes in how to proceed with charges will have lasting consequences. A SRA who does not know the social and economic consequences of a criminal record may plead guilty in order to 'get it over with'.[4] Counsel is useful at all stages of the criminal trial process. Not only is counsel useful during the trial process but pre-trial matters are just as important. One particular pre-trial process in which an accused person may not receive counsel is at the plea bargain stage. Despite a focus on the criminal trial, most cases are not resolved in the trial process. Approximately 90 percent of all criminal charges will be resolved before a trial is held.[5]

The Supreme Court of Canada has shown its support of the plea process. In Burlingham (1995) Iacobucci J. gives the following view on plea discussions in his decision "...the plea bargain is an integral element of the Canadian criminal process..."[6] The

guidance the SCC offers for plea bargains is that they should be carried out "honourably and forthrightly".[7]

Plea discussions... an "essential part of the criminal justice system in Nova Scotia"

The guidance given to Crown prosecutors in conducting plea negotiations is to use a principled but flexible approach.[8] This flexibility encouraged among prosecutors is to enable prosecutors to take into account the myriad of circumstances occurring in the criminal process. In the Provincial Prosecutor Procedures Manual, the importance of plea discussions is described as being an "essential part of the criminal justice system in Nova Scotia."[9]

The PPSC Deskbook contains a stern warning about the risks of dealing with self-represented people. 'Plea or sentence negotiations with an unrepresented accused call for extreme care'.[10] The extent of the prosecutorial direction for self-represented people is how to avoid problems and not how to accommodate their particular interests.

A court site study conducted by the government of Canada determined prosecutors do not plea bargain with self-represented accused.[11] As a result, those who are self-represented do not receive the same benefits as those accused with counsel, as they are unable to participate in the plea discussion process.

The lack of willingness of prosecutors to conduct plea discussions with SRA is contrary to existing guidelines.

The Public Prosecution Service guidelines require plea discussions to occur when it is necessary to maintain consistency from case to case.[12] If plea discussions are not conducted with the SRA, there is no consistency from case to case. The reluctance of prosecutors to deal with a SRA is due to a number of factors such as disclosure of evidence, lack of understanding about pertinent legal issues by self-represented individuals, and an imbalance in bargaining power.

The reluctance or inability, on the part of prosecutors, in not conducting plea discussions with SRA is cause for concern. Accused people may be overcharged as a bargaining tactic in anticipation of plea discussions taking place. The problem that occurs with the SRA is that plea discussions never take place, and as a result the charges never get reduced.

A SRA who does not have an opportunity to participate in plea discussions may also end up with a criminal record when this could have been avoided. If the SRA had participated in plea discussions they may have been able to participate in diversion programs or charges may have been dropped entirely.

My suggestion towards making plea bargaining accessible to the self-represented accused (SRA)

To remedy this problem, a two-step process should be implemented on how plea discussions should be made accessible to a SRA.

> A prosecutor considering conducting plea discussions shall not take into consideration whether an accused has counsel, as a relevant factor, in the decision to conduct plea discussions.
>
> An amendment to the Criminal Code be added, requiring a pre-trial conference for those who are self-represented.

Unless there is a positive obligation on prosecutors to engage in plea discussions with a SRA, SRAs will not receive the benefit of plea discussions. The plea discussion process needs to ensure substantive equality versus procedural equality. In order to accomplish this substantive equality, a mechanism needs to be implemented to ensure an opportunity for the SRA to participate in plea discussions.

To ensure that a SRA has had an opportunity to engage in plea discussion, a pre-trial conference needs to occur. During this conference the judge would inquire as to whether a plea discussion has been attempted. If no plea discussions have been attempted, the judge would make inquiries as to whether a plea discussion is warranted.

One difficulty with this proposed solution is the facilitation of the plea process with the SRA. If prosecutors are obliged to engage in plea discussions then there needs to be a third party involved in the process. This third party would ensure that the interests of the accused are protected and allow the prosecutor to maintain an arms-length relationship with the accused.

Duty counsel would be well-suited to take on the additional responsibility of assisting with plea discussions with the SRA. Currently they do provide this service in rare instances when plea discussions take place with a SRA. If it were mandatory for prosecutors to offer plea discussions to a SRA, this service would place more demands on duty counsel.

Increased funding would be required for duty counsel to make this solution viable. Duty counsel already have tremendous workloads, and adding a further responsibility would place further strains on the system. Without increased support, a patchwork system would result, leading to more innocent people being convicted of criminal offences and increased costs to society. A substantive fairness will not be realized until all people, regardless of counsel, are able to navigate the criminal justice process and ensure access to justice.

Chief Justice Beverly McLachlin highlighted the importance of access to justice in a speech made in 2009: "... justice is essential to the flourishing of men, women and children and to maintaining social stability and security".[13] Access to justice requires that all people be able to effectively participate in the court system. McLachlin went on to say "once justice is lost, it is difficult to reinstate" which is evident from the harm caused to those wrongfully convicted.[14]

Concluding remarks

There must be a change in how plea discussions are made available to SRAs in order to maintain equality and justice. A two-step solution would help ensure that SRAs have an opportunity to participate in plea discussions. While perhaps still at a relative disadvantage, self-represented people may then at least be able to access what the Supreme Court of Canada has referred to as "an integral part of our criminal justice system".[15] ••

RÉSUMÉ

SELF-REPRESENTED ACCUSED (SRA) AND THE CRIMINAL PROCESS OF PLEA DISCUSSIONS

Par Billy Sparks – Juris Doctor – Schulich School of Law, Third Year

Une étape avant-procès au cours de laquelle un accusé pourrait ne pas être conseillé par un avocat est celle de la négociation de plaidoyer; pourtant ce processus mettant en présence les procureurs de l'État (tant de la province que du fédéral) et un accusé se représentant lui-même n'est pas toujours accessible. Bien que les accusés se représentant eux-mêmes puissent participer au processus de négociation d'un plaidoyer, les procureurs sont généralement réticents à traiter avec eux. Pour établir une équité substantielle dans le processus de négociation d'un plaidoyer, il faudrait qu'il existe une obligation positive pour les procureurs d'entamer des discussions sur le plaidoyer avec tous les accusés, sans égard à leur capacité de retenir les services d'un avocat. Les négociations de plaidoyers dont il est question dans cet article sont celles menées en Nouvelle-Écosse, tant par les procureurs provinciaux que fédéraux.

FOOTNOTES

1. *R v Feeney*, [1997] 2 SCR 13, [1997] SCJ No 49 at para 55
2. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11[Charter]
3. Kent Roach, "*Is There a Constitutional Right to Legal Aid*" *in Making the Case: The Right to Publicly Funded Legal Representation in Canada* (Ottawa: Canadian Bar Association, 2002) at 190E
4. Research and Statistics Division, Court Site Study of Adult Unrepresented Accused in the Provincial Criminal Courts Part II: Site Reports by Robert G Hann et al , (Ottawa: Department of Justice Canada, 2002) at 167
5. International Cooperation Group, Plea Bargaining by Milica Potrebic Piccinato, (Ottawa: Department of Justice Canada, 2004) at 6 [Plea Bargaining]
6. *R v Burlingham*, [1995] 2 SCR 206, [1995] SCJ No 39 at para 23
7. Ibid.
8. PPSC Deskbook, supra note 19 at 2 1
9. Nova Scotia Public Prosecution Service, Resolution Discussions and Agreements, (Halifax: NSPPS, 2013) at 1[NSPPS]
10. Ibid at 7
11. CSS Part I, supra note 4 at iv
12. NSPPS, supra note 9 at 2
13. Right Honourable Beverley McLachlin PC, "*The Challenges We Face*" (Presented at the Empire Club of Canada, Toronto, 8 March 2007), [unpublished]
14. Ibid
15. *R v Burlingham*, [1995] 2 SCR 206, [1995] SCJ No 39 at para 23.

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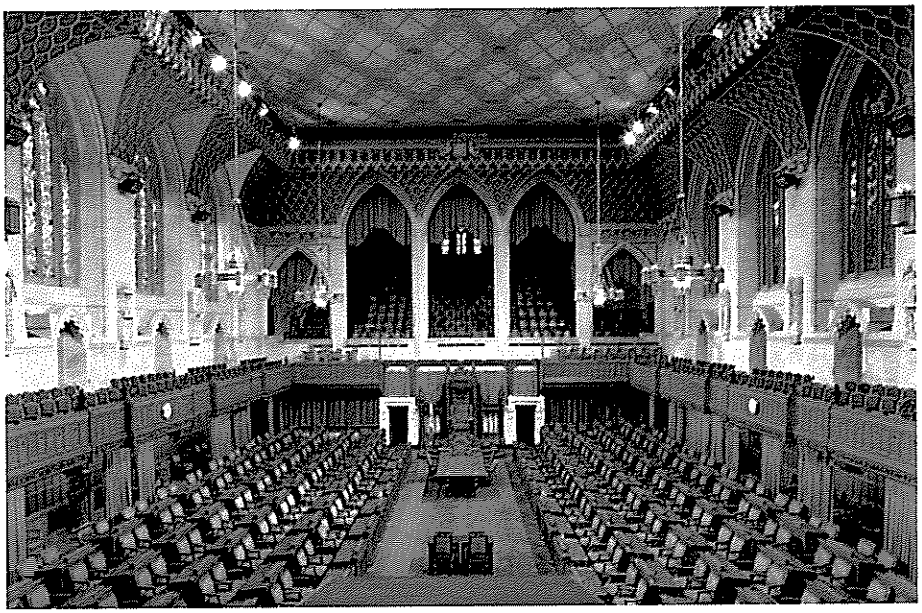

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Les jeunes et la justice au Canada : contribuer à la promotion d'idées, de données disponibles et de l'innovation

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CANADIAN YOUTH & JUSTICE

CALL FOR ABSTRACTS

Congress 2017, Canadian Youth and Justice will highlight Canadian provincial, territorial and international practices, innovations, research and trends that are influencing positive outcomes for youth to support a national perspective. The conference will look at the evolving youth justice system within the context of an integrated and effective social justice network.

Congress 2017 will showcase preventive and innovative approaches, initiatives, and research that address underlying factors that impact youth involvement in the criminal justice system.

TARGET AUDIENCE

Canadian and international justice and youth justice related staff, community agencies, police, probation, child welfare, criminal and social justice academics, researchers and all other provincial / federal government service providers.

PRESENTATION THEMES

Research and Evidence-Informed Programming (examples, but not limited to):

- Youth and community resiliency

Innovative and Collaborative Approaches (examples, but not limited to):

- Youth with specialized needs (mental health, substance use, FASD, diversity, LGBTQ community)
- Indigenous youth
- Community Building Initiatives
- Police Driven Initiatives

INVITATION À PRÉSENTER DES COMMUNICATIONS

Le Congrès 2017, *Les jeunes et la justice au Canada*, braquera les projecteurs sur les pratiques, les innovations, la recherche et les tendances canadiennes, provinciales, territoriales et internationales qui produisent des résultats positifs chez les jeunes à l'appui d'une perspective nationale. Ce congrès se penchera sur l'évolution du système de justice pour les jeunes dans le contexte d'un réseau de justice sociale intégré et efficace.

Le Congrès 2017 mettra en vedette des approches et des initiatives préventives et novatrices ainsi que des études portant sur les facteurs sous-jacents ayant une incidence sur l'implication des jeunes dans le système de justice pénale.

PUBLIC CIBLE

Le personnel œuvrant dans le milieu de la justice pour les jeunes au Canada et sur la scène internationale, les organismes communautaires, les services policiers et de probation, les services de protection de l'enfance, les universitaires s'intéressant à la justice pénale et sociale, les chercheurs et tous les autres fournisseurs de services gouvernementaux, provinciaux et fédéraux.

THÈMES DES COMMUNICATIONS

La recherche et la programmation fondée sur des données probantes (p. ex., sans s'y limiter) :

- La résilience des jeunes et de la collectivité

Les approches novatrices et de collaboration (p. ex., sans s'y limiter) :

- Les jeunes présentant des besoins spéciaux (problèmes de santé mentale, de consommation d'alcool et autres substances, ensemble des troubles causés par l'alcoolisation fœtale (ETCAF), diversité, communauté LGBT)
- Les jeunes autochtones
- Des initiatives de renforcement des collectivités
- Des initiatives émanant de sources policières

SUBMIT // SOUMETTRE

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www.cjao.ca

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Special student rates will be available.

Les étudiants pourront profiter de tarifs préférentiels.

Ontario

CJAO
The Criminal Justice Association of Ontario